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BY- SHAPIRO, FRIEDA S. EVANS, JACK
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CASE DIGESTS OF 44 STATE AND 39 FEDERAL JUDICIAL DECISIONS DIRECTLY CONCERNING PUBLIC SCHOOL PUPILS AND STUDENTS IN PUBLIC SUPPORTED COLLEGES AND UNIVERSITIES ARE ARRANGED BY STATE AND CLASSIFIED UNDER SIX HEADINGS--(1) ADMISSION AND ATTENDANCE--8, (2) SCHOOL DESEGREGATION--30, (3) LIABILITY FOR PUPIL INJURY--20, (4) RELIGION AND SECTARIAN EDUCATION--8, (5) TRANSPORTATION--5, AND (6) MISCELLANEOUS--12. AN INTRODUCTORY COMMENT BRIEFLY SUMMARIZES CASES UNDER EACH OF THE HEADINGS AND POINTS OUT THAT DECISIONS REPORTED INCLUDE LITIGATION FROM 32 STATES. ALL BUT ONE OF THE 30 DECISIONS CONCERNED WITH SCHOOL DESEGREGATION CAME FROM FEDERAL COURTS. SCHOOL DESEGREGATION OPINIONS WERE CONCERNED WITH PUBLIC SCHOOL SYSTEMS IN 11 STATES, WITH COURT DECISIONS CONSISTENTLY UPHOLDING DESEGREGATION AND APPROVING EFFORTS TO END DE FACTO SEGREGATION. EA 001 331 IS A RELATED DOCUMENT. THIS DOCUMENT IS AVAILABLE AS STOCK NUMBER 435-13316 FROM THE PUBLICATIONS EDITOR, RESEARCH DIVISION, NATIONAL EDUCATION ASSOCIATION, 1201 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20036 FOR $1.25. (JK)

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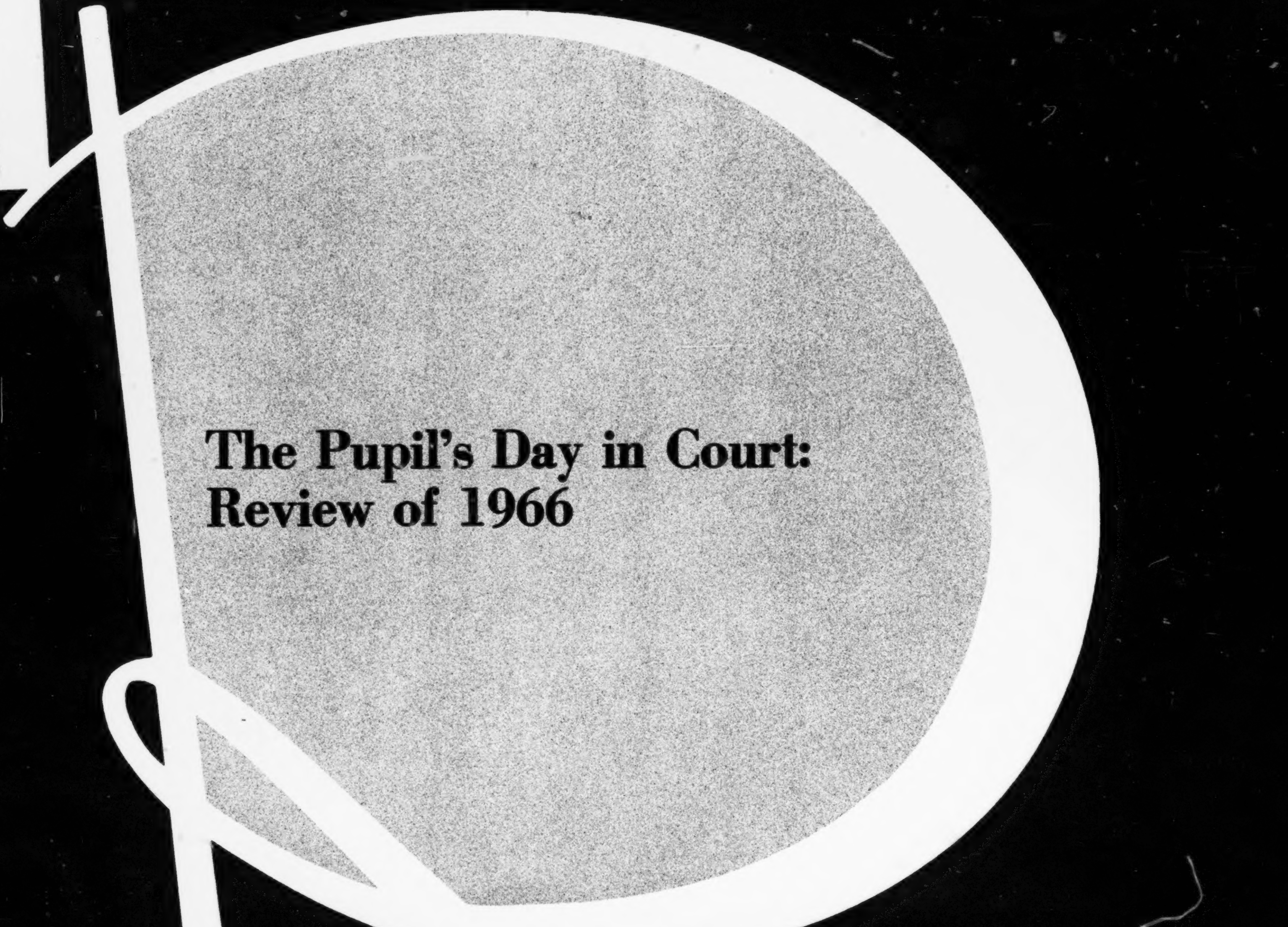

The Pupil's Day in Court: Review of 1966

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The Pupil's Day in Court: Review of 1966

An Annual Compilation

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Project Director: FRIEDA S. SHAPIRO, Assistant Director

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FOREWORD

Controversies with respect to constitutional and legal rights of pupils on matters of school organization, administration, discipline, and other school-related concerns reach state and federal courts each year. The decisions from the judicial forum spelling out the rights of pupils have had and will continue to have a profound influence on the course of public education throughout the country.

Information on current legal issues relating to pupils, why and how they arise, and how they are adjudicated, may be found in this annual report. Its publication rounds out 25 years of the series in this special area of school law started in 1942 by the NEA Research Division. This latest compilation contains digests of court opinions published during 1966.

This report was prepared by Frieda S. Shapiro, Assistant Director, with the assistance of Jack Evans, Research Assistant.

GLEN ROBINSON
Director, Research Division

INTRODUCTION

This report contains digestsof 83 judicial decisions of direct concern to pupils in the public schools and to students in higher education institutions supported by public funds. Included among these cases are decisions with issues on the legality of providing services to parochial-school pupils at public expense. The digests were compiled from court decisions published in the National Reporter System during the calendar year 1966.

The 83 decisions reported here include litigation from 32 states. State courts produced 44 decisions; 19 of these were rendered by the highest state court of the state in which the lawsuit started, 17 decisions were delivered by lower state appellate courts, and 8 decisions came from trial courts. The federal courts account for 39 decisions, broken down into 11 decisions from circuit courts of appeal and 29 decisions from federal district courts. Although somewhat over two-thirds of these federal decisions relate to school desegregation, 11 decisions in the compilation are concerned with a variety of other questions.

The case digests in this compilation are classified under six headings: (a) admission and attendance, (b) school desegregation, (c) pupil injury, (d) religion; sectarian education, (e) transportation, and (f) miscellaneous. The decisions are arranged by state under each topic. When more than one decision is reported from a state under the same topic, they are listed alphabetically by case title. Table 1 lists the decisions by the major issue raised.

All but two of the cases were civil proceedings. One of the two decisions stemming from criminal actions involved an unsuccessful appeal from a probation order by students at the Berkeley Campus of the University of California who were found guilty of resisting and delaying arresting officers, unlawful assembly, and failure to leave a university building after closing time. The charges arose out of a sit-in protest against university rules regulating speech, assembly, and petition on the campus. In the second case, an Amish parent was convicted for violating the Kansas pupil attendance law for failing to send his 15-year-old daughter to a state accredited school. The Kansas Supreme Court upheld the guilty verdict and rejected arguments that the compulsory attendance law unconstitutionally infringed the parent's religious liberties.

In civil proceedings, a probate court finding of child neglect and the appointment of a guardian for the purpose of having the child vaccinated against smallpox as a prerequisite to school attendance was upheld by the Arkansas Supreme Court against assertions by the parent that this action violated his constitutional rights of freedom of religion.

Of the 83 decisions in this report, 30 contained issues concerned with school desegregation. All but one of these 30 decisions came from federal courts. These school desegregation cases by no means reflect the volume of litigation in this subject area. Some of the cases counted only once had several appearances before the courts, some are consolidated decisions of two or more cases with common issues, while other cases heard by the courts have not appeared as published decisions during the calendar year 1966 in the National Reporter System. Information on other decisions, proceedings, and orders not covered in this compilation may be found in the Race Relations Law Reporter, published by the Vanderbilt University School of Law.

The 30 opinions on school desegregation reported here embraced public school systems in 11 states, including New Jersey and New York where plans to reduce racial imbalance in the schools faced challenge. Elsewhere, the courts were asked to give relief from the continued operation of biracial school systems, to accelerate desegregation plans, to pass on the adequacy of freedom of choice plans and to deal with questions of faculty assignments by race--all matters that have been before the courts in previous years. In a number of the cases, school desegregation plans that failed to provide for a measure of faculty integration were found to be inadequate. Following the 1965 decision of the Supreme Court of the United States in Bradley v. School Board of Richmond County, Virginia, that Negro children and their parents have standing to question racial assignments of school faculties, some courts have held that, where the existence of segregated faculties has been shown, pupils do not need to prove actual adverse effect of this practice on them before they can obtain relief. This judicial position is reflected in the case of Wheeler v. Durham City Board of Education decided by the United States Court of Appeals for the Fifth Circuit.

Among other decisions, the Fifth Circuit Court of Appeals in three Mississippi school desegregation cases rejected the arguments made by white intervenors that innate differences in learning aptitudes of the Negro and white races are a reasonable basis for classifying children by race and justify school segregation. The court ordered the school systems named as defendants to desegregate their schools at a pace that complies with the minimum standards established in the desegregation guidelines of the U. S. Department of Health, Education, and Welfare to meet the requirements of Title VI of the 1964 Civil Rights Act. A federal district court held that Negro children and their parents had standing to attack the constitutionality of a Louisiana statute authorizing tuition grants to pupils attending private schools and to have the case heard on its merits, since their complaint made out a substantial contention that state tuition grants were given to maintain an unconstitutional segregated school system.

In Northern school desegregation cases, a New York state court refused the request of white parents to enjoin a voluntary transfer plan entered into between an urban and a suburban school board whereby first-grade pupils from culturally and racially imbalanced schools in Rochester could attend schools in the adjoining Irondequoit school district. The question befor a federal district court in another New York case was the constitutionality of a plan redrawing school boundary lines adopted by the Buffalo school system to alleviate racial imbalance in accord with a directive from the state commissioner of education. White plaintiffs claimed that their constitutional rights were violated because the plan was based solely on racial considerations in making pupil assignments. In dismissing the suit, the court held that the Fourteenth Amendment did not bar cognizance of race in a proper effort to eliminate racial imbalance in a school system. Another federal district court in a suit against the Malverne, Long Island, school district refused to restrain the enforcement of an order of the state commissioner of education to reorganize the school attendance zones to correct racial imbalance in the schools. The white parent lost arguments that his child was deprived of his constitutional rights because he was excluded from his neighborhood school, and that the 1964 Civil Rights Act barred any plan to correct racial imbalance. A federal district court in New Jersey upheld a plan adopted by the Englewood school system for a city-wide sixth-grade school established to alleviate de facto segregation.

In 1966, as in years past, pupil injury was a prolific source of litigation. The 20 decisions under this topic arose in 12 states. Teachers were named as defendants in four cases. Governmental immunity of school districts from tort liability was upheld by courts in Michigan, Ohio, and Pennsylvania. The United States Court of Appeals for the Sixth Circuit rejected the contention made by an Ohio pupil injured in a school accident that the enforcement of the governmental immunity doctrine deprived him of rights under the Fourteenth Amendment. The Pennsylvania Supreme Court once more refused to abolish by judicial fiat the governmental immunity rule protecting school districts from liability for torts arising out of the performance of governmental functions but not from proprietary functions. Nor would the court accept the contention that the immunity was waived when a school district purchased liability insurance.

Aside from the religious issues in the two cases concerned with vaccination and violation of compulsory school attendance laws, nine cases decided during 1966 raised constitutional questions pertaining to freedom of religion, the use of public funds for services to parochial-school pupils, or outright states grants to church-affiliated schools. A federal district court refused to enjoin the recital of a verse of thanks by kindergarten children in an Illinois school system, ruling that the contested verse was not a prayer. The New Jersey Supreme Court affirmed the determination of the state commissioner of education that children of the Black Muslim sect who on religious grounds refused to pledge allegiance and salute the flag as required by state law came within the provision exempting from the law children with conscientious scruples; therefore, these children had been improperly excluded from school. A trial court in Ohio held that a released-time program operated by a local school district violated the establishment clause of the First Amendment and granted injunctive relief. However, the court ruled that in the absence of a statute or regulation, public-school teachers who are members of religious orders may wear religious garb while teaching.

An experimental dual enrollment program initiated by the Chicago board of education which enabled parochial-school pupils to take all courses, except English, social studies, music, and art, in a public high school was upheld as valid by a lower appellate court in Illinois against a challenge that the program violated the state compulsory attendance law and provisions of state and federal constitutions. But the Missouri Supreme Court ruled that a shared-time program which permitted parochial-school pupils to be released from their schools for part of their six-hour day to receive speech therapy in public-school buildings contravened the state compulsory attendance law. Moreover, the school district could not be reimbursed from public funds when speech teachers were sent into the parochial schools since such a program was not for the purpose of maintaining free public schools to which the use of state funds is

TABLE 1.-- MAJOR ISSUES INVOLVING PUPILS IN 1966

State	Admission and attendance	School desegregation	Pupil injury	Religion; sectarian education	Transportation	Miscellaneous	Total decisions
1	2	3	4	5	6	7	8
Alabama	...	7	...	...	...	...	7
Arizona	...	...	1	...	...	...	1
Arkansas	1	1	...	...	...	...	2
California	...	...	1	...	1	2[a]	4
Colorado	...	...	...	...	...	2[b]	2
Delaware	...	...	...	...	1	...	1
Florida	1	...	...	...	...	...	1
Georgia	...	3	...	...	...	...	3
Illinois	...	...	...	2	...	...	2
Iowa	1	...	...	...	...	1[c]	2
Kansas	1	...	...	...	...	...	1
Louisiana	...	1	1	...	...	...	2
Maryland	...	...	...	1	...	...	1
Massachusetts	1	...	...	...	...	...	1
Michigan	...	...	3	...	...	...	3
Minnesota	...	...	1	...	...	...	1
Mississippi	...	2	...	...	...	3[d]	5
Missouri	...	...	1	1	...	...	2
Nevada	...	...	1	...	...	...	1
New Jersey	...	1	...	1	...	...	2
New York	2	4	5	1	2	2[e]	16
North Carolina	...	2	...	...	...	...	2
North Dakota	...	...	...	...	...	1[f]	1
Ohio	...	...	1	1	...	...	2
Pennsylvania	...	...	3	...	...	...	3
South Carolina	...	2	...	...	...	...	2
South Dakota	...	...	...	1	...	...	1
Tennessee	...	...	...	...	1	...	1
Texas	1	1	...	...	...	1[g]	3
Virginia	...	6	...	...	...	...	6
Washington	...	...	1	...	...	...	1
Wisconsin	...	...	1	...	...	...	1
Total number of decisions	8	30	20	8	5	12	83

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[a] One case is an appeal by students from a conviction on grounds of unlawful assembly and other charges arising out of a sit-in protest against university rules. Second case involves a school-board rule banning fraternities and sororities.

[b] Includes a damage action for denying home tutoring to a physically handicapped child, and an action concerned with a college fraternity ban.

[c] Constitutional validity of a school-board rule banning pupils from wearing arm bands connected with Viet Nam war.

[d] Freedom of speech issue in two cases involving school-board rules prohibiting pupils from wearing freedom buttons. Third case raises constitutional objections to university traffic and parking regulations.

[e] Issues are right of a student to be awarded a bachelor's degree, and the right of a parent to have attorney present at school conference on son's suspension for misconduct.

[f] Legality of statute charging college students a facility fee.

[g] Damage action by former student against university psychiatrist.

limited under state constitutional and statutory provisions.

In a 4-to-3 decision, the Maryland Court of Appeals declared unconstitutional under the establishment clause of the First Amendment statutes providing outright matching state grants to three colleges for the construction of science buildings and dining halls, because the colleges were found to be sectarian. The church affiliation of a fourth college was found to be historic in nature rather than sectarian in a legal sense, and hence the statute providing a grant of public funds to this college to construct a classroom building and a dormitory was not unconstitutional.

In other cases, a lower appellate court in New York dismissed a declaratory judgment action brought by several school boards challenging the constitutionality of a state law requiring the loan of textbooks without charge to children in parochial and private schools. The court held that the school boards had no standing to bring the action. Although the case was not decided on its merits, the court said it was satisfied that the statute did not contravene state and federal constitutional provisions. On the other hand, the Delaware Supreme Court decided that a bill enacted by the legislature requiring free bus transportation over established public-school bus routes to pupils attending nonprofit, private schools would violate a provision in the state constitution prohibiting the use of tax-raised funds "in aid of any sectarian, church or denominational school."

Various school-board rules were contested by pupils on constitutional or other grounds in a number of cases. In a suit by a 16-year-old mother for an order requiring the school board to readmit her to the local high school, a Texas court ruled that the school board was without legal authority to adopt a rule which permanently excluded a person of scholastic age from school attendance. The Massachusetts Supreme Court upheld a rule against extreme haircuts as a valid exercise of the discretionary power of the local school board. Fraternity bans were upheld in courts in California and Colorado. An Iowa school-board prohibition against students wearing black arm bands to mourn servicemen who died in Viet Nam and to support a truce proposal was found by a federal district court not to violate constitutional rights of free speech.

The U. S. Circuit Court of Appeals for the Fifth Circuit in one case held that it was arbitrary, unreasonable, and an unnecessary stifling of free speech for a school board to forbid Negro pupils to wear freedom buttons where this activity caused no commotion and did not disrupt school discipline. But in a second case, the same court upheld as reasonable a similar school-board rule under circumstances where the distribution of the buttons was associated with unruly behavior and breaches of discipline.

ADMISSION AND ATTENDANCE

Arkansas

Mannis v. State of Arkansas ex rel. DeWitt School District No. 1
398 S.W. (2d) 206
Supreme Court of Arkansas, January 10, 1966; rehearing denied, February 14, 1966
Certiorari denied, 86 S. Ct. 1864, June 6, 1966.

The school district refused to admit a 10-year-old child to its public schools because he was not vaccinated against smallpox as required under a state health regulation applicable to all children attending public or private schools. This child and his parents were members of the General Assembly and Church of the First Born, a religious body whose members believe that vaccination is against the will of God. After being refused admittance to the public school, the child was enrolled in a parochial school the Church then organized and conducted. Vaccination was not required for attendance at this school.

Thereafter, the school district petitioned the probate court to declare the child neglected in that he was not attending a public or private accredited school because his parents refused to have him vaccinated. In accord with the school district's request, the probate court appointed a temporary guardian for the child for the purpose of having him vaccinated and then enrolled in "a public, private, or parochial school where said child will receive a reasonable education."

In their appeal on behalf of the child, the parents asserted that taking the child away from them to have him forcibly vaccinated contrary to his religious beliefs violated his constitutional rights. The parents also asserted that they were complying with the compulsory school attendance law because the state vaccination regulation did not apply to parochial schools.

The issue in this appeal was the right of the child to attend a parochial school without being vaccinated, and further, whether the school he was attending was affording him a reasonable education.

In previous decisions the Arkansas Supreme Court had upheld the state health regulation requiring the vaccination of all school children as a reasonable and valid exercise of the police power of the state.

In this decision, the court held that the state health regulation requiring smallpox vaccination of school children in public and private schools had the force and effect of law, and a child attending school in noncompliance with the regulation, or the refusal of the parents to comply with the regulation as a prerequisite to school attendance, was sufficient evidence on which to base a finding of child neglect. Therefore, the probate court was correct in appointing a guardian for the purpose of having him vaccinated as a prerequisite to school attendance. The court held further that a parochial school is a private school within the meaning of the state health regulation since such parochial school is managed by a private organization.

Having decided that vaccination is a prerequisite to the child's attendance at any school, the court deemed it unnecessary to determine whether the parochial school in question was affording the child a reasonable education.

A petition for a writ of certiorari for a review of this decision was denied by the Supreme Court of the United States.

Florida

Woody v. Burns
188 So. (2d) 56
District Court of Appeal of Florida, First District, June 21, 1966; rehearing denied, July 21, 1966.

An architectural student at the state-financed University of Florida was prevented from reregistering when he voluntarily disclosed that during the preceding term he had not taken a certain art course as he had been instructed to do by his department head. For this offense, he was charged with altering his course assignment card without prior permission of his department head. This charge was heard by the Faculty Discipline Committee. It was then shown that at the student's request, the card was altered by a faculty member authorized to make course changes during registration. The committee in a split decision found that the student was not proven guilty of physically altering the card but that he was guilty of unbecoming conduct in that he knowingly caused a university record to be altered against the stated wishes of his department head. The recommendation of this committee that the student be placed on disciplinary probation for the remainder of his undergraduate career was approved by the university president.

This probation decision was not appealed. Two days after it was rendered, the student petitioned to register late, but the faculty committee of the College of Architecture and Fine Arts denied his request without granting him notice and a hearing. The student remained out of school for the trimester and applied for enrollment the next term. His application was summarily denied, without notice or hearing. In denying the last registration request, an action which amounted to the student's permanent expulsion from the architectural college, the faculty committee considered incidents of misconduct prior to his failure to register for the art course. These incidents were not matters of record and the student was never given an opportunity to be heard as to them. The university president affirmed the decision denying the student further enrollment in the architectural college, but without prejudice to applying for enrollment in any other colleges of the university. The decision was affirmed by the board of regents, which gave the student a hearing, and by the state board of education. The student then applied to the court for an order to compel his admission to the College of Architecture and Fine Arts, but the relief was denied. On appeal, the judgment was reversed.

The court held that the action in expelling the student was invalid on its face because he had never been confronted with the charges against him, and he was not given an opportunity to be heard by the committee that excluded him. What was required, the court ruled, was the bringing of open charges of misconduct in the usual manner before the duly authorized disciplinary committee. It was improper for the faculty committee to circumvent the duly authorized committee and to take on to itself the authority to impose its own penalty for the student's misconduct.

In reaching its decision, the court cited the minimum criteria of constitutional due process governing disciplinary bodies of tax-supported institutions when expelling students for misconduct. These include notice and statement to the student of the specific charges and grounds, which if proven, would justify expulsion under duly established regulations; a hearing which allows the student to present evidence in his defense before a duly established disciplinary body organized and operated by well-defined procedures; and setting forth the results and findings in a report open to the student's inspection. None of these elements was met here, the court found.

Illinois

Morton v. Board of Education of the City of Chicago
216 N.E. (2d) 305
Appellate Court of Illinois, First District, Second Division, February 18, 1966.

(See p. 42. Case involves a dual enrollment plan for parochial-school pupils contested as unconstitutional and as in violation of state compulsory school attendance law.)

Iowa

Clarke v. Redeker
259 F. Supp. 117
United States District Court, Southern District of Iowa, Central Division, September 15, 1966.

For tuition purposes, the State University of Iowa classified all of its students as residents or nonresidents on various criteria. Resident students included those over 21 who, while adults, established bona fide residences in the state for purposes other than to qualify for resident status. Nonresident female students could attain residence by marrying a resident, although no similar privilege was accorded nonresident male students. Tuition fees for nonresidents were higher than for residents.

This action was brought by a law student who was classified as a nonresident. He had entered the Iowa State University in September 1961. Prior thereto, he had resided in Illinois. Since enrolling at the state university, he had continuously attended the school and was 22 years old at the time of the suit. In 1964 he married an Iowa resident. The student complained that he was deprived of his constitutional rights and sought to enjoin state officials from charging him nonresident tuition.

The court held that the classification of nonresidency placed on a student from another state was lawful in that the classification constituted only a presumption which could be overcome by showing changed circumstances. The court found the university review committee to be correct in its interpretation of the tuition regulations, that a student originally classified as a nonresident may under appropriate circumstances be classified as an Iowa resident even though he is enrolled in a full program at the university. In view of this interpretation, it appeared to the court that the application of the regulations to plaintiff-student was unduly rigid and that he had established a substantial basis for being classified as a resident. Therefore, the cause was remanded to the review committee for reconsideration of the student's application.

The court said that under the Fourteenth Amendment a state cannot deny equal protection of law to any person within its jurisdiction. However, this does not prevent classifications by states. Such classification cannot be arbitrary, but must be reasonably based on substantial difference and relate to a legitimate object. The court found that the Iowa tuition regulations met these standards.

The Iowa tuition regulations, the court noted, were not set up as absolute qualifications. Students from other states were presumed to be in Iowa for educational purposes and, under the regulations, could be reclassified as residents if appropriate facts and circumstances arose. If a request for reclassification was rejected, there was provision for appeal.

As to the distinction between residents and nonresidents in tuition rates, the court upheld the state rationale that resident students or their parents paid taxes to the state of Iowa which supported the state university. Thus, the higher tuition charged nonresidents tended to more evenly distribute the cost of operating and supporting the state university between residents and nonresidents attending the school.

The student further contended that the university tuition regulations discriminated against him on the basis of sex in that a nonresident female student may become a resident through marriage, but a male nonresident could not. The court upheld this regulation, too, as bottomed on the well-established legal concept that the domicile of a wife is the same as that of her husband. While the state might reasonably classify both husband and wife students as residents of the same state regardless of who is the nonresident, it is not required to do so. Although university regulations could be clarified on this point, they did not amount to a constitutional violation, said the court.

Kansas

State v. Garber
419 P. (2d) 896
Supreme Court of Kansas, November 5, 1966.

The state of Kansas charged that the parent failed to require his 15-year-old daughter to continuously attend an authorized school, in violation of a state compulsory attendance law. The parent was sentenced for violating this law, and appealed, raising two questions: whether he was guilty of any offense and whether, as applied to him, the compulsory attendance law violated his religious freedom.

The parent was a member of the Old Order Amish Mennonite Church. After his daughter completed the eighth grade at a public school, she was not enrolled at another public, private, or parochial school, but took correspondence courses from a school in Chicago and was enrolled in an Amish school where classes were held one day per week and were taught by a farmer with an eighth-grade education. Emphasis was placed on a "vocational home training curriculum," consisting of farm projects for boys and home economics for girls. The father contended that the enrollment of his daughter in the correspondence course and Amish school satisfied the compulsory education statute.

The court held that the father was guilty of violating the statute on the ground that he did not send his daughter to an authorized school as the law required. The law made no exception for schools such as those she did attend. The only exception was for physical or mental inability. Furthermore, the law contemplated a school week of five six-hour days when pupils were to be under direct supervision of teachers while they engaged in educational activities. Since the daughter's schooling did not correspond to this requirement, the father, no matter how sincere or well intentioned, must be deemed guilty of violating the statute.

The father was also incorrect when he attacked the constitutionality of the statute as an infringement on his religious liberty. The father had a right to enroll his daughter in any accredited school of his choosing, including religious schools. This was a reasonable requirement in the exercise of the state's police power for the general welfare; failure to comply with the requirement had never been condoned in the name of religious freedom. "The question of how long a child should attend school is not a religious one." So in this respect, all religious rights are conditional, said the court.

Applying this rule, the court was unable to perceive how religious freedom was abridged in the instant case. The freedom of the father and his daughter to worship was not affected by the school law. Also, the father could not be heard to object to her receiving a secular education when he had sent her to public schools for eight years already.

Massachusetts

Leonard v. School Committee of Attleboro
212 N.E. (2d) 468
Supreme Judicial Court of Massachusetts, Bristol, December 7, 1965.

A 17-year-old senior who wore his hair in an extreme style was suspended by his school principal until he returned with an acceptable haircut. The boy was a conscientious, well-behaved, and properly dressed student. He was a professional musician and his image as a performer, which was in part based on his hair style, was an important part of his professional success.

The principal wrote his parents that school regulations did not allow students to wear extreme haircuts or any other items felt to be detrimental to classroom decorum. After the suspension, the pupil and his parents requested and were given a hearing before the school board. The board sustained the action of the principal. Thereafter, this action was brought to restrain the school board, the superintendent, and the principal from preventing the pupil from attending the high school.

The pupil argued that the rule or regulation which bars a pupil from attending classes solely because of the length or appearance of his hair is unreasonable and arbitrary since these matters are in no way connected with the successful operation of a public school. He also contended that the rule was an invasion of family privacy touching on matters occurring while he is at home and within the exclusive control of his parents.

The court upheld the rule as a valid exercise of the broad discretionary powers conferred by law on the school board. It held that the rule requiring an acceptable haircut had a reasonable connection with the successful operation of the school since the unusual hair style of the pupil could disrupt and impede the maintenance of a proper classroom atmosphere and decorum.

The court rejected the argument that the haircut rule is an invasion of family privacy, saying that the domain of family privacy must give way insofar as it may be affected by a rule reasonably calculated to maintain school discipline. "The rights of other students, and the interest of teachers, administrators, and the community at large in a well run and efficient school system are paramount," the court stated.

For these reasons, the court also rejected the pupil's contention that even if the rule is valid, its application to him is unreasonable. Even conceding that the length and appearance of his hair are essential to his image as a performer, and hence his ability to follow his chosen profession, the court said, the discretionary powers of the school board are broad and its decision will not be reversed by the courts unless it can be shown that the board acted arbitrarily or capriciously. The court concluded that the decision of the board to apply the rule to this pupil was not an abuse of power.

New York

Fogel v. Goulding
273 N.Y.S. (2d) 554
Supreme Court of New York, Special Term, Nassau County, Part I, September 22, 1966.

A mother sought to enroll her five-year-old son in the first grade of a public school for the school year 1966-67. The boy would not have been six years old until January 6, 1967, and the law required first-grade pupils to have reached their sixth birthday on or before December 31, 1966. He had completed kindergarten at an unregistered, nonpublic school which provided instruction substantially equivalent to that of a public school kindergarten. The board of education maintained that admitting this child would give preference to children attending unregistered, nonpublic schools. The mother contended that the board's refusal to admit her son was arbitrary, capricious, and unreasonable.

Relying on opinions by the state commissioner of education that a child with an adequate kindergarten background should be enrolled in the first grade regardless of slight difference in age, the court held that the boy was entitled to be enrolled in the first grade, notwithstanding his age. The local school board was found to have circumvented the commissioner's opinions by making age the sole criterion and disregarding ability and prior schooling. This was an invalid criterion.

Menon v. Kennedy
264 N.Y.S. (2d) 775
Supreme Court of New York, Appellate Division, November 23, 1965.

A parent asked the court to issue an injunction requiring the school authorities to allow her child to continue her education in the fourth grade without disruption. The complaint claimed breaches of contract by the school authorities and allegations of tortious acts, but did not set forth the essential terms and conditions of the contract, or show any damage or injury.

The court dismissed the complaint as insufficient because it failed to state any essential facts constituting the material elements of any course of action.

North Carolina

In Re Assignment of James Varner
146 S.E. (2d) 401
Supreme Court of North Carolina, February 4, 1966.

(See page 25.)

Texas

Alvin Independent School District v. Cooper
404 S.W. (2d) 76
Court of Civil Appeals of Texas, Houston,
June 2, 1966.

A 16-year-old mother sued for an injunction requiring the school board to readmit her as a student in the high school. She had withdrawn from school in her sophomore year to be married. Subsequently a child was born to the marriage.

The student was denied readmission to the school because of a rule of the school board forbidding admission of a married mother. The board rule encouraged such a person to continue her education in the local adult education program and through correspondence courses. However, the undisputed evidence in this instance showed that this student could not be admitted to the adult education program until she reached age 21, and that the correspondence courses were in homemaking and not of such a nature as to entitle her to credit for entry into college.

The statutes provide that children over six and under 18 years of age at the beginning of a scholastic year shall be included in the scholastic census and shall be entitled to the benefit of the public school fund for that year; and that school trustees of a district shall admit the benefits of the public schools to any person over age six and not over 21 years old, provided such person resides in the district.

In view of these statutes, the court held that the school board was without legal authority to adopt a rule that excludes from school the mother of a child who was of an age for which the state furnished school funds. The effect of these statutes, the court said, is to require a school district as a matter of law to admit to the public schools any resident over the age of six and under the age of 21.

The court stated that under its broad statutory power to administer school affairs, a school board may adopt rules it deems necessary to maintain discipline among students. However, the board could not enact a rule which in effect permanently excludes a person of scholastic age from school attendance, and any rule of discipline the board adopts may not result in suspension beyond the current term.

Judgment directing the admission of the student to school was affirmed.

SCHOOL DESEGREGATION

Alabama

Carr v. Montgomery County Board of Education
253 F. Supp. 306
United States District Court, Middle District, Alabama, Northern Division, March 22, 1966.

(See Pupil's Day in Court: Review of 1964, p. 19.)

A class suit was brought on behalf of Negro children to enjoin the school board from operating a compulsory biracial school system in Montgomery County, Alabama, and from assigning students, teachers, and other personnel on the basis of race. The court issued a preliminary injunction against continuation of a biracial system, and ordered the board to desegregate four grades in September 1964 and to submit to the court a detailed plan to desegregate the entire school system within a time and in a manner that met constitutional requirements (232 F. Supp. 705).

In the present decision, the school authorities were directed to put into effect a court-ordered desegregation plan, and to report to the court in June of each year until further order the expected pupil enrollment and professional staff assignment to each school by race and grade, or position, for the next school year, and to report further each September the actual data on pupil enrollment and staff assignment.

Under the desegregation plan prescribed by the court, all grades except grades 5 and 6 are to be desegregated by September 1966 and pupils assigned to school without regard to race or color on a freedom-of-choice basis. Grades 5 and 6 are to be desegregated in September 1967. All newly constructed and all newly expanded schools are also to be operated on a nonsegregated freedom-of-choice basis.

The plan outlines the freedom of choice procedures to be followed and the form to be used. It provides that each pupil or parent must exercise a free choice annually; any pupil not making a choice is to be assigned to the school nearest his home where space is available. In assigning pupils, no preference is to be given for prior attendance at a school, nor is his choice to be denied except for overcrowding, in which case preference is to be given on the basis of proximity of the school to the homes of the pupils choosing it. Officials, teachers, and school employees are forbidden to influence any parent or pupil in making a choice, and information on individual choices and school assignments are not to be made public. To the maximum extent feasible, school buses are to be routed to serve each pupil choosing any school in the system. Each pupil is to have full access to all services, facilities, and programs, including athletics and other extracurricular activities.

In addition, the plan provides that race and color shall not be a factor in hiring, assignment, reassignment, promotion, or dismissal of teachers and other professional staff members, except that assignments shall be made to eliminate the effects of past discrimination; assignments are to be made so that teachers, principals, and staff of a school are not composed of members of one race. The school superintendent is to take affirmative steps to solicit and encourage teachers to accept transfers to schools in which the majority of the faculty members are of a race different from the transferee's. Where displacement results from desegregation or school closings, the teachers must be transferred to any position in the school system where there is a vacancy for which they qualify.

The plan also directed certain named schools with inadequate facilities to be closed and the displaced pupils reassigned on a freedom-of-choice basis whether or not the time table for desegregation applies to their grades. Lastly, the court ordered the school board to design and provide remedial educational programs to eliminate the effects of past discrimination, particularly the results of unequal and inferior educational opportunities offered in the past to Negroes.

Davis v. Board of School Commissioners of Mobile County
364 F. (2d) 896
United States Court of Appeals, Fifth Circuit, August 16, 1966.

(See Pupil's Day in Court: Review of 1964, p. 19; Review of 1963, p. 12.)

In the fourth of a series of cases dealing with the integration of Mobile, Alabama, schools, the issue was the legality of creating two school areas which coincided with the two racial school districts that preceded the desegregation plan and provided the foundation for segregated schools. Under the subsequent desegregation plan, white pupils were permitted to transfer out of their area into another, but no reciprocal privilege was extended to Negro pupils, despite the fact that many children lived in racially mixed neighborhoods.

The court found that this plan fell short of legal requirements. The new dual area system tended to perpetuate segregation patterns even though the areas were not identified as white or Negro, as evidenced by the fact that under 2/10 of 1 percent of Negro children in Mobile were attending white schools. Consequently, a great length of time would be necessary for the plan to come to fruition.

Further under the "two-area" desegregation plan in question, pupils attending schools had been given the option of attending their area school or the nearest school outside their area but predominated by their race--the means by which white pupils could opt out of Negro areas, but not vice-versa.

The court concluded that this violated the requirement that dual areas be abolished and that Negro pupils be given a free choice of school. It ordered the Mobile school board to grant to any child the right, at his request, to attend the school which he would have been allowed to attend, had Negro pupils been free to transfer to previously all-white schools. In addition, the court held that Negro pupils wishing to take a course not offered in their area might transfer to any school offering such a course. But if this optional transfer arrangement caused overcrowding of a school, preference must be given to the pupils living nearest the school.

The court also ruled that the new plan must be modified to end the present policy of hiring and assigning teachers according to race. This must be accomplished by the time the last local schools are fully desegregated for the school year 1967-68.

Harris v. Bullock County Board of Education
253 F. Supp. 276
United States District Court, Middle District, Alabama, Northern Division, March 11, 1966.

(See Pupil's Day in Court: Review of 1964, p. 20.)

Parents of Negro children brought a class suit to enjoin the Bullock County school board from continuing to operate a compulsory biracial school system and from assigning pupils, teachers, and other school personnel on the basis of race. In an earlier decision, the court found that the board was operating a racially discriminatory school system, issued a preliminary injunction against the continuance of the segregated system, and ordered the school board to take immediate steps leading to desegregation. The school board assured the court it would take the initiative to bring an end to the operation of the biracial school system and would prepare a complete plan for this purpose. The board was required to file a detailed desegregation plan with the court by January 1965 (232 F. Supp. 959).

In accordance with the evidence previously presented to the court, and with the consent of the parties, the court now ordered the school officials to put into effect the school desegregation plan incorporated in this decision. Further, the school officials were ordered to file a report with the court each May until further notice on expected pupil assignments in each school by grade and race for the next school year; to file a report each June on planned staff assignments in each school by race and grade or position; and to file a report each September on the actual data on pupil enrollment and staff assignment.

Under the court plan, all grades are to be desegregated in the fall of 1966 except grades 2, 3, and 4 which are to be desegregated in the fall of 1967; all pupils in the desegregated grades are to be assigned without regard to race or color on a freedom-of-choice basis. The court outlined the requirements of the freedom-of-choice plan and the form to be used. The plan provides that each parent or pupil must exercise a free choice annually; any pupil not exercising his choice is to be assigned to a school nearest his home where space is available. In assigning pupils, no preference is to be given prior attendance at school, and no choice is to be denied except for overcrowding unless the matter is submitted to and is approved by the court. In the case of overcrowding, preference is to be given on the basis of proximity of the school to the homes of the pupils choosing it. School officials, teachers, and school employees are forbidden to influence any parent or pupil in making a choice, and information on individual choices and school assignments are not to be made public. To the maximum extent feasible, school buses are to be routed to serve each pupil choosing any school in the system. Each pupil is to have full access to all services, facilities, and programs, including athletics and other extracurricular activities.

The plan also forbids race or color as a factor in hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, except that staff assignments shall be made to eliminate effects of past discrimination. Assignments are to be made so that the faculty and staff of a school is not composed of members of one race.

Additionally, certain named schools with unequal facilities are to be eliminated. The plan also requires the school board to provide educational programs to eliminate the effects of past discrimination, particularly the effects of unequal and inferior educational opportunities offered in the past to Negro pupils in the school system.

Harris v. Crenshaw County Board of Education

259 F. Supp. 167
United States District Court, Middle District of Alabama, September 23, 1966.

In 1965, the board of education adopted a freedom-of-choice desegregation plan whereunder children could freely transfer to schools of their choice regardless of race. But only a small minority of those Negro pupils applying to white schools were accepted. On the other hand, all white pupils exercising their free choice of school were accepted into white schools as were all Negro children choosing to attend Negro schools. The school authorities explained that the white schools to which Negroes sought entry were overcrowded and preference was given to those living closer, usually whites.

A large majority of county pupils were transported to school by bus. Before desegregation, bus routes were based on racially segregated school attendance patterns. But with the advent of desegregation plans, the bus routes still did not change. Thus, Negro pupils found themselves with transporation available only to schools formerly attended solely by Negroes.

Negro citizens and their children requested the court to enjoin the county board of education and the county school superintendent from continuing their policy of operating a dual school system based on color and to enjoin them from refusing to admit Negroes to county schools which they wished to attend.

The court held that the school authorities' justification for perpetuating racial segregation in schools was unacceptable and enjoined them from further maintaining a dual system based on color. The court also ordered the school authorities to study and revise the busing system so as to service pupils on a nonracial basis, to provide equal opportunities without regard to color, and to enroll Negro pupils wishing to attend white schools for grades 1 and 7 through 12 for the school year 1966-67. The following year, grades 2 through 6 were to be desegregated.

Lee v. Macon County Board of Education

253 F. Supp. 727
United States District Court, Middle District, Alabama, Eastern Division, March 11, 1966.

(See Pupil's Day in Court: Review of 1964, p. 20; Review of 1963, p. 14.)

In earlier proceedings, the court found that the Macon County school board was operating a compulsory biracial school system in which pupils, teachers, and other school personnel were assigned solely on the basis of race. The school board was ordered to eliminate its biracial system and to submit a desegregation plan. The plan subsequently was found to be unacceptable and the court directed the school board to present a more complete and realistic plan (231 F. Supp. 743).

In accord with the evidence previously submitted, and with the consent of the parties, the court now ordered the school board to put into effect the desegregation plan outlined in this decision. The school officials were also ordered to report to the court each May until further notice the expected pupil assignments in each school by grade and race for the next school year; to report each June the planned staff assignments in each school by race and grade, or position; and to report each September the actual data on pupil enrollment and staff assignment.

Under the court-ordered desegregation plan, all grades are to be desegregated in the fall of 1966 and pupils are to be assigned to school without regard to race or color on a freedom-of-choice basis in accord with requirements set forth in the plan. The plan provides that each parent or pupil must exercise a free choice annually; any pupil not exercising his choice is to be assigned to a school nearest his home where space is available. In assigning pupils, no preference is to be given prior attendance at a school and no choice is to be denied except for overcrowding, in which case preference is to be given on the basis of proximity of the school to the homes of the pupils choosing it. School officials, teachers, and school employees are forbidden to influence any parent or pupil in making a choice, and information on individual choices and school assignments are not to be made public. To the maximum extent feasible, school buses are to be routed to serve each pupil choosing any school in the system. Each pupil is to have full access to all services, facilities, and programs, including athletics and other extracurricular activities.

The plan forbids race or color as a factor in hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, except that assignments may be made to further the process of desegregation. Faculty desegregation must include significant progress beyond the accomplishment for the 1965-66 school year.

The plan also ordered certain named schools with inferior facilities to be eliminated as educational facilities; others were either to be eliminated or else improved to make them equal in facilities to other schools in the county if they are to be used. One closed high school was ordered reopened. Further, the court required the school board to design and provide remedial education to eliminate the effects of discrimination, particularly the results of unequal and inferior educational opportunities previously offered to Negro pupils in the county.

United States v. Choctaw County Board of Education
259 F. Supp. 408
United States District Court, Southern District of Alabama, S.D., September 3, 1966.

In the school year 1965-66, the board of education had taken steps to desegregate local schools. In August 1966, it revoked all assignments of Negro pupils to white schools, reestablishing a totally segregated school system. Teaching faculties, too, had been segregated before January 1966. Steps taken thereafter to desegregate the faculties were revoked also in August 1966.

After reminding the school board of its obligations under a recent series of Supreme Court and federal court decisions that school segregation was no longer lawful, that adherence to the law was an obligation of all citizens, and that revocation of desegregation created an "emotional impact" on Negroes whose hopes had been buoyed by the earlier decisions, the court ordered the board to cease operating a compulsory biracial school system and assigning pupils by color, and to permit Negro pupils choosing to attend previously white schools to enroll therein.

United States v. Wilcox County Board of Education
366 F. (2d) 769
United States Court of Appeals, Fifth Circuit, August 30, 1966.

Pending an appeal from an order of the lower court, the United States Government moved for an injunction directing the county school board to adopt and put into effect a school desegregation plan whereby pupils could transfer from one school to another without regard to race. The lower court had found that the board was operating a segregated school system and no Negro pupil had ever attended a white school in Wilcox County, although 12 years had passed since Brown V. Board of Education of Topeka, the United States Supreme Court decision outlawing school segregation. But the lower court had refused to direct that a plan be put into effect for the 1966-67 school year because of insufficient time to adequately accomplish the transfer of pupils in all grades.

The appellate court held that in view of this long delay, relief should be granted. The court directed that the county board of education be restrained from requiring further racial segregation in any school system under their supervision. The local school board was ordered to put into effect for the 1966 fall term a free-choice plan under which all pupils in grades 1, 2, 3, 7, 8, and 9 could attend any school of their choice. No choice was to be denied except for good and sufficient reasons related to administration of the school system, such as overcrowding. In that case, preference was to be given to pupils living nearest to the school involved.

Arkansas

United States v. Junction City School District No. 75
253 F. Supp. 766
United States District Court, Western District of Arkansas, March 21, 1966.

The United States attorney general brought suit on behalf of the United States to compel desegregation of the public schools of Junction City, Arkansas, and to require the local school district to provide equal educational opportunities to all pupils in all public schools without regard to race. The school district moved to dismiss the action on the ground that the court was without jurisdiction because the attorney general did not meet certain prerequisites of the Civil Rights Act of 1964, namely, that he did not receive a written complaint by one or more parents whose minor children were being denied equal protection of law.

The court denied the school district's motion to dismiss. The certificate executed and signed by the attorney general was held sufficient to satisfy the requirements of the federal statute authorizing his suit. The certificate recited that the attorney general had received proper written complaint from Negro parents which he believed to be meritorious, that the signer could not afford to sue in his own behalf for reasons of personal safety, employment, or economic standing, that the school district had been notified of the complaint and had time to adjust the conditions alleged therein, and that the institution of the action will materially further the orderly achievement of desegregation in public education.

The court was of the opinion that the attorney general need not additionally detail the facts behind the certificate, nor need he disclose the complainants' names, as the school district insisted. Saying that the Sixth Amendment, requiring identification of accuser and confrontation with him by the witness applied only to criminal cases, the court ruled that it had jurisdiction to hear the case.

Georgia

Stell v. Savannah-Chatham County Board of Education
255 F. Supp. 83
United States District Court, Southern District of Georgia, Savannah Division, August 23, 1965.

(See Pupil's Day in Court: Review of 1964, p. 29; Review of 1963, p. 17.)

Negro school children brought an action against the board of education of the city of Savannah and the County of Chatham to desegregate the school system. They appealed from an order of the district court denying their request for a preliminary injunction against the continued operation of a compulsory biracial school system. The basis for this denial rested on the defense of white persons who had intervened in the suit and asserted that disparate scores as between Negro and white children on educational achievements and intelligence tests given in the Savannah schools warranted classification of the schools for rational educational purposes on the basis which resulted only incidentally in separate schools according to race.

The circuit court of appeals granted an order for temporary relief in which the school board was required to make a prompt and reasonable start toward desegregation beginning with the 1963-64 school year. The board put into effect a grade-a-year plan under which applications for the grades to be desegregated were to be considered with reference to numerous assignment criteria. The Negro plaintiffs objected to the plan, but the district court ruled it was without jurisdiction to accept or reject the plan and dismissed the suit. On appeal, the decision was reversed. The circuit court of appeals ruled that classification of pupils on the basis of different educational aptitudes which results in separate schools for Negro and white pupils was unconstitutional under the Brown decision. The court said that there is no constitutional prohibition against assigning individual pupils to particular schools on the basis of intelligence, achievements, or aptitudes, or on the basis of a uniformly administered program, but race must not be a factor in making the assignments. The order dismissing the suit was vacated, and the case was remanded to the district court for the issuance of an amended injunction to include the submission of a plan to desegregate the school system within certain time limits. (333 F. (2d) 55, June 18, 1964)

On remand, the district court had under consideration the amended desegregation plan submitted by the school board. The court construed the remand order as leaving open to it to determine the "manner in which integration should be accomplished." On the basis of the testimony presented at the original trial and on additional evidence before it, the court disapproved the desegregation plan of the school board because "there is no indication that integration is to be accomplished in any other manner than by congregating children because of race or color." The court said that the Brown decision "held that only children of 'similar age' and the 'same educational qualifications' are entitled to be classed together in schools under the equal protection clause of the 14th Amendment." Therefore, the court stated it was free to find and did find that upon the evidence presented that in order for school children to be effectively educated in Savannah-Chatham County, they must be separated as to age and educational qualifications. The school board was ordered to prepare and submit a desegregation plan which would provide the best possible education for all children with the greatest benefits to all school children without regard to race or color but with regard to similarity of ages and qualifications.

The white intervenors also insisted that white teachers no longer be discriminated against in favor of Negro teachers. In view of evidence at the trial that the mean yearly salary of Negro teachers markedly exceeded that of the white teachers and that Negro principals assigned lower competence ratings to Negro teachers than white principals assigned to white teachers, the court ordered that the plan provide that discrimination in favor of Negro teachers and against white teachers be terminated.

Finally, the court ordered the school board to continue to collect and give effect to test results so that race and color as such shall play no part in the assignment of pupils or teachers and so that classifications according to age and mental qualifications may be made intelligently, fairly, and justly.

Stell v. Savannah-Chatham County Board of Education
255 F. Supp. 88
United States District Court, Southern District of Georgia, Savannah Division, April 1, 1966.

(See case digest above.)

On August 23, 1965, the district court, after a hearing, entered an order which disapproved the desegregation plan submitted by the school board of Savannah-Chatham County and ordered it to prepare a plan consistent with the opinion rendered that day. On November 3, 1965, the court held another hearing on a revised plan submitted which was approved by the board's attorney and the attorney for the white intervenors. Negro plaintiffs asked for additional time to study the proposed plan and to file objections thereto. On November 12, 1965, the United States attorney general moved to intervene in the case with objections to the plan. The motion to intervene was allowed. Thereafter, the November 3 plan was withdrawn, revised, and resubmitted. The new plan eliminated race or color as a determining factor in pupil assignments, provided for desegregation of all grades by September 1, 1966, and for the nondiscriminatory paying and retention of faculties, but no provision was made for nondiscriminatory hiring of teachers.

The court held further hearings at which the Savannah-Chatham school superintendent testified in effect that under the policy followed in the school system, white applicants for teaching positions were required to have a minimum score of 500 on the National Teachers Examination while a minimum score of only 400 was required of Negro applicants. This evidence was undisputed and no explanation for the distinction was attempted. There was other evidence before the court that the mean yearly salaries of Negro teachers markedly exceeded those of white teachers, and that Negro principals assigned relatively lower competence ratings to Negro teachers than white principals assigned to white teachers.

The court ordered that hereafter all teachers shall be employed in accordance with identical standards, that different minimum grades on teachers' examinations for Negro and white applicants be terminated, and that all rules and policies whereunder Negro applicants for teaching positions and Negro teachers are accorded preferences over white applicants or white teachers because of race be abolished. Discrimination in favor of Negro teachers and against white teachers with greater competence as to pay was ordered to be terminated by the start of the 1966-67 school year, and the school authorities were required to file a detailed plan with the court with respect to nondiscriminatory hiring and payment of salaries to teachers without regard to race. All questions relating to integration of teaching staffs were deferred until after the discrimination in employment and pay of teachers shall have been terminated and the court-approved school desegregation plan is put into effect.

The court rejected contentions that it revise its decision of August 23, 1965, which provided that children may be separated by age and educational qualifications, but without regard to race or color. The court approved the revised plan submitted by the intervening white children and approved by counsel for the school board.

Turner v. Goolsby
255 F. Supp. 724
United States District Court, Southern District of Georgia, October 22, 1965.

Negro citizens of Taliaferro sought to restrain defendants, the county solicitor general, the sheriff, the attorney, the county school board, the school superintendent, and other school employees from conspiring to deny plaintiffs' civil rights in several areas including local school desegregation.

The facts were that there were only two schools in the county, one formerly all white and the other Negro. Plaintiffs alleged that the school superintendent and the school board secretly helped to arrange to have all the white children leave the county for schools in other counties and arranged daily bus transportation for this purpose. This was allegedly to eliminate the only white school available to 87 Negro children who sought transfers to the white school.

Pursuant to a desegregation plan filed by the school board with the U.S. Department of Health, Education, and Welfare, Negro pupils applied for a transfer, but the applications were not considered by the superintendent or the school board. The superintendent suspected that some of the applications had been forged and asked the school-board attorney to investigate. The attorney obtained what he considered to be sufficient evidence to have one of the plaintiffs, a former teacher in the Negro school, indicted for forging three of the transfer applications.

Proof was clear that the superintendent and the school board knew in advance that the white school in the county would be closed, yet they did not advise the Negroes of this. The Negroes charged that all this was part of the conspiracy to transfer white pupils out of the county so that desegregation could not be achieved.

For their part, defendants counter-claimed for an injunction against plaintiffs' activities which allegedly interfered with the conduct of the Negro schools and with bus transportation for white pupils. It appeared without dispute that plaintiffs had attempted to block school buses transporting white children to adjoining counties and to board such buses. Also, on three occasions, Negroes invaded the Negro school and interrupted the teaching process there. The court said that action to prevent this disorder was ordinarily left to state and local government, but a federal court may assume jurisdiction by way of counter-claim under the circumstances.

The court held that the 87 Negro children wishing to transfer to a desegregated school were entitled to do so. Inasmuch as there was presently no white school open in the county, the Negroes were to be accorded their rights by the re-opening of the county white school or by arranging for them to attend school with local white children in schools of adjoining counties. As long as the 87 Negro pupils were denied their right to transfer, public funds for the cost of educating the white children, including the cost of transportation, was illegal. But to avoid irreparable harm to the white children, which would result by enjoining the use of public funds, the court ordered the county school system into receivership. The state superintendent of schools was appointed receiver, and was instructed to submit a plan to the court whereunder the illegal expenditure of funds would be discontinued and the right of the 87 Negro children to transfer would be granted. The court also enjoined the defendants from interfering with plaintiffs' civil rights, and enjoined the plaintiffs from interfering with the school buses and disturbing the Negro school in the county.

In a later, supplementary proceeding the United States moved to intervene, but the court was of the opinion that the litigation should not be expanded at the instance of a late comer. The matter had already been tried extensively, relief had been granted, and the plan had been carried out, all prior to the United States' entry.

Subsequently, the state superintendent of schools sought to be dismissed from his receivership and have the school system and properties revert to the county. All Negro children that so requested were by then attending adjoining county schools with whites and all difficulties in the transition had been worked out as best as possible. Therefore, the receiver was discharged, and the local school system reverted to local authorities for resumption of local operation.

Louisiana

Poindexter v. Louisiana Financial Assistance Commission
258 F. Supp. 158
United States District Court, Eastern District of Louisiana, New Orleans Division, August 3, 1966.

Louisiana established a program of tuition grants for all pupils, white and Negro, who attended private schools. The grants were available to white pupils who attended private schools open only to whites. Negro school children and their parents brought a class action to challenge the constitutionality of the statute authorizing such grants on the ground that the purpose was to maintain an unconstitutional segregated school system supported by state funds. They asked the court to enjoin various state officials from enforcing, operating, or executing the tuition grant program as long as Negroes were being excluded from the private schools because of race.

The court held that the Negro public-school children and their parents had standing to sue, having made out a substantial contention that the state grants were given to maintain an unconstitutional segregated school system. The court did not, however, pass on the merits of the case, but said that the case should be decided after a full trial on the facts, including the extent of state involvement.

Defendants had unsuccessfully moved for a dismissal on the ground that the plaintiffs lacked standing to challenge the constitutionality of the program. They maintained the complaint was a state claim and therefore belonged in a state court. Defendants argued that plaintiffs were not assailing the statute as unconstitutional; rather, the controversy was over the disbursement of public funds for tuition. Since plaintiffs did not ask the court to integrate or close the private schools, defendants pointed out, the suit was nothing more than a taxpayers' action to enjoin allegedly unlawful expenditure of public funds for private purposes.

This argument, said the court, rested on a misunderstanding of the nature of plaintiffs' rights. Plaintiffs were asserting federal rights protected by the federal Constitution and were concerned only indirectly with unlawful disbursements of state funds. Their direct concern was that the state had established, in effect, a second, segregated school system. The court took judicial notice that under the Civil Rights Act definition that a school supported predominantly by government funds is a public school and said that if plaintiffs' allegations are found to be true, the Louisiana private schools were a proper object of a desegregation suit.

Two of the defendants, the Louisiana State Board of Education and the Orleans Parish School Board, moved for dismissal of the suit against them on grounds of misjoinder. They maintained that they had no connection with the tuition grant program, but merely administered the public schools. Plaintiffs contended that the school boards were involved in continuing to enforce segregation and, therefore, were proper parties to a suit testing the program's constitutionality.

The court held that the school boards were properly joined as defendants. It reasoned that the challenged tuition grant legislation did not excuse the boards from their constitutional responsibilities for a comprehensive public education program. For jurisdictional purposes, said the court, it is proper to consider the interrelated activities of all state agencies with their primary responsibility for a comprehensive education program. Isolating small units of individual responsibility would allow the state to avoid its constitutional obligations. Similarly, individual schools should not be dismissed for the suit either, if they have an interest in any decision affecting their right to admit pupils receiving tuition grants. Although they are not necessary parties regarding the constitutionality of the tuition grant system, the state would risk contradictory decisions if one of these schools or its pupils would sue for payment of the grants.

Mississippi

Jackson Municipal Separate School District v. Evers
Biloxi Municipal Separate School District v. Mason
Leake County School Board v. Hudson
357 F. (2d) 653
United States Court of Appeals, Fifth Circuit, January 26, 1966. Certiorari denied, 86 S. Ct. 1586, May 31, 1966.

(See Pupil's Day in Court: Review of 1964, p. 38 and 39.)

The school boards and white intervenors in suits brought by Negro pupils seeking desegregation of the public schools in Jackson, Biloxi, and Leake County, Mississippi, argued that innate differences in learning aptitudes of the white and Negro races are a reasonable basis for classifying children by race, and demonstrate that separate schools for Negro children are to the advantage to both races, and justify continued school segregation in Mississippi. Over objections of the Negro plaintiffs, the federal district judge accepted evidence on this contention, made detailed findings in favor of the school boards and the white intervenors, but nevertheless entered an order enjoining school segregation "contrary to the facts and the law applicable thereto" because he felt bound by the decision of the Court of Appeals of the Fifth Circuit in Stell v. Savannah-Chatham County Board of Education. That case held that classification of pupils by race because of differences in educational aptitudes was unconstitutional under the Brown decision which proscribes segregation in the public schools on the ground that separate but equal schools for the races are inherently unequal.

On appeal, the argument on innate racial differences relative to learning aptitudes was rejected. The court dismissed the appeal and affirmed the order for injunctive relief with instructions that the order be modified to comply with its decision in Singleton v. Jackson Municipal Separate School District, also decided this day. (See next case digest).

The Supreme Court of the United States refused to grant a petition for a writ of certiorari for a review of this decision to the Jackson school board.

Singleton v. Jackson Municipal Separate School District
355 F. (2d) 865
United States Court of Appeals, Fifth Circuit, January 26, 1966.

(See Pupil's Day in Court: Review of 1965, p. 28; Review of 1964, Evers v. Jackson Municipal Separate School District, p. 38 and 39.)

In its decision of June 22, 1965, this court granted interlocutory relief from segregated schools to the Negro plaintiffs. The decision required the Jackson school board to desegrgate four grades in 1965-66 and directed the board to comply with the minimum standards for school desegregation established by the U.S. Office of Education to meet the requirements of Title VI of the 1964 Civil Rights Act in order to qualify for federal financial aid. These minimum standards set the fall of 1967 as the target date for desegregation of all grades.

The issue in the present appeal was the adequacy of the revised school desegregation plan submitted by the school board in July 1965 and tentatively approved by the federal district court. The proposed freedom-of-choice plan called for desegregation of grades 1, 2, 3, and 12 in September 1965, four more grades in September 1966, and the remaining grades in September 1967.

The U.S. Government, an intervenor in this action, contended on appeal that the lower court erred in failing to find that the proposed plan must extend to all 12 grades in 1965-66 "in order to satisfy the requirement that desegregation progress with all deliberate speed."

The request for immediate total school desegregation was rejected by the appellate court. Finding that the Jackson school board had at last made a start to desegregate the schools, the court held that it is sufficient if the Jackson public schools comply with the U.S. Office of Education minimum standards, including the objective of total school desegregation by September 1967. However, the court made it clear that while administrative problems may justify an orderly transitional period during which the system may be desegregated a few grades at a time, the assignment of Negro children to still-segregated grades is unconstitutional. Therefore, these children have an absolute right as individuals to transfer to grades they are excluded from because of race and they are to be permitted to transfer regardless of the slow pace of systematic desegregation by grade.

In the interest of avoiding future litigation, the appellate court took up other objections. The case was remanded to the district court for an evidentiary hearing on the contention that the school desegregation plan allocated faculty on an alleged racial basis. The court noted that the school board had gone only as far as holding joint faculty meetings and a joint in-service program. Since the school system must be totally desegregated by September 1967, the court said it is essential that the plan provide an adequate start toward elimination of race as a basis for employment and allocation of teachers, administrators, and other staff personnel.

The U.S. Government also objected to the board's failure to require all pupils to make an affirmative choice of school. The court found that the plan failed to provide for the nonracial assignment of pupils who do not designate a choice of school. This omission, the court said, is characteristic of a freedom-of-choice plan and one of its inherent weaknesses. To ameliorate this weakness, the court directed that the plan provide for adequate notice, abolition of dual racial zones, and make available a choice of schools annually to pupils for transfers as well as initial assignments.

The order of the district court was affirmed in part and reversed in part, and the case remanded for revision of the plan consistent with this opinion.

New Jersey

Fuller v. Volk
250 F. Supp. 81
United States District Court, District of New Jersey, February 3, 1966.

(See Pupil's Day in Court: Review of 1965, p. 30; Review of 1964, p. 40.)

In an earlier decision, the district court upheld the validity of a plan promulgated by the Englewood, New Jersey, school board and approved by the state commissioner of education. The plan established a city-wide sixth-grade school which all sixth-grade pupils in the Englewood school system were to attend. Its purpose was to alleviate de facto segregation.

Two groups of white plaintiffs attacked the plan. One, the Fuller group, initiated a taxpayers' suit in October 1963 to enjoin the expenditure of public funds for an unconstitutional purpose. Intervening plaintiffs, the Volpe group, claimed standing to sue as parents of children in the Englewood public schools. The district court held that the plaintiffs had failed to show any denial of constitutional rights, and entered judgment for defendants--the city, the board of estimate, the school board, the state commissioner of education, and Negro intervenors, whose initial proceedings to correct racial imbalance in the Englewood schools brought the plan about.

On appeal, this decision was reversed and the case was remanded to the district court. The suit of the Fuller group was ordered dismissed for lack of jurisdiction. As to the Volpe group, the district court was directed to ascertain if this group had standing to maintain the suit since no proof had been adduced that any member had a child or children in the sixth-grade school. On remand, the district court ruled that two members of the Volpe group had standing to sue as parents of fifth-grade children who soon will be required to attend the central sixth-grade school.

The district court was also to consider on remand whether in the light of the recent decision of the New Jersey Supreme Court in Booker v. Board of Education (212 A. (2d) 1, June 25, 1965; see Pupil's Day in Court: Review of 1965, p. 28) the doctrine of federal abstention should apply, whether the doctrine of exhaustion of state remedies has any relevancy, and whether the court's original decision on the constitutional issue on the Englewood plan has been materially altered.

Before passing on these questions, the district court emphasized that when hearing the case previously, it had not been called upon to decide whether the school board had an affirmative duty under the Fourteenth Amendment to take any action with respect to de facto segregation in the Englewood public schools, but the narrow issue for decision was whether the school board was constitutionally prohibited from acting as it did. The intervening plaintiffs had sought to set aside the plan as violative of their constitutional rights, but the court held that the federal Constitution did not preclude a school board from taking appropriate steps to reduce or eliminate de facto segregation in the public schools where the action is taken in furtherance of and pursuant to state law and state educational policies. It held further that the plan under attack was constitutional.

The court then considered the impact of the Booker case, wherein a sixth-grade school plan to eliminate racial imbalance in another New Jersey school system was held not to go far enough. The court said that this issue is not present here since, unlike the dissatisfied Negro petitioners in the Booker case, the parents of Negro children attending the Englewood schools are not complaining that the plan does not go far enough, but seek to have the plan upheld. Here only the parents of white children attack the constitutionality of the plan as infringing on their rights under the Fourteenth Amendment. For these reasons, the court concluded that there was no justification for invoking the doctrine of federal abstention or requiring the parties to exhaust state administrative remedies, and that its original determination that the plan was valid should stand.

New York

Etter v. Littwitz
268 N.Y.S. (2d) 885
Supreme Court of New York, Monroe County,
April 18, 1966.

(See Pupil's Day in Court: Review of 1965, p. 34.)

Plaintiffs, parents and taxpayers in the suburban West Irondequoit School District, sought to permanently enjoin the school board from executing a plan whereby 25 first-grade pupils from culturally and racially imbalanced schools in contiguous Rochester were to be transferred on voluntary parental request to the West Irondequoit school.

The State Board of Regents had declared as a matter of policy that racially imbalanced schools are educationally inadequate. Accordingly, the state commissioner of education issued a directive requesting all school districts to determine the racial imbalance in their schools and formulate plans for their correction. In accordance with this directive, the board of the West Irondequoit school district which had four Negro pupils in a total enrollment of 5,800 adopted a policy of "Educational Enrichment in Inter-Cultural Relations." In furtherance of this policy, the board, which had statutory authority to admit nonresident pupils, entered into an arrangement to serve as a receiving school for pupils enrolled in imbalanced schools in Rochester on a limited basis. The plan was not limited to Negro pupils, but was extended to the culturally and financially underprivileged of all races and color.

Plaintiffs claimed that the action taken by the school board was unconstitutional, capricious, and discriminatory, but these contentions were rejected. The court found that under the Education Code, the State Board of Regents had authority to declare that racially imbalanced schools are educationally inadequate. In view of the statutory authority of the State Board of Regents and the commissioner of education to formulate public policy and make administrative decisions in the field of education, and in accord with decisions of the highest court in the state, the court held that it had no power to evaluate sociological, psychological, or educational assumptions relied upon by the commissioner.

In line with judicial precedents in New York State, the court held also that the transfer plan adopted was not unconstitutional, and since the plan was entirely voluntary, it was not discriminatory. Neither was the plan arbitrary or capricious. Therefore, courts are not permitted to substitute some other judgment for the judgment adopted by the school boards, and the board decision that a correction of cultural and racial imbalance is an educational aid to both the minority group and the pupils in the receiving school must stand.

The board's motions for summary judgment and dismissal of the complaint were granted.

Offermann v. Nitkowski
248 F. Supp. 129
United States District Court, Western District,
New York, December 9, 1965.

A number of the schools in the Buffalo school system were predominantly Negro as a result of neighborhood residential patterns. Certain parents, dissatisfied with the action of the school board in dealing with this racial imbalance, appealed to the state commissioner of education. In accordance with state policy for the elimination of racial imbalance in the public schools, the commissioner directed the Buffalo school board to prepare and adopt a plan to alleviate the situation in its system. The initial phase of the plan adopted by the school board did not abandon the neighborhood school concept, but achieved better racial balance through relocation of school boundary lines and restriction of pupil transfers which otherwise could defeat the plan's purpose. In redrawing the lines, factors such as school capacities, and the distances children would have to travel were taken into account.

This action was instituted to enjoin the board from carrying out the plan. Plaintiffs questioned the constitutionality of the commissioner's order and the plan adopted pursuant thereto. They did not claim hardship or that the plan was not a product of reasonable, honest, and forthright effort by all concerned. They claimed that their constitutional rights were violated because the plan was based solely on racial considerations in making pupil assignments.

Rejecting this claim as untenable, the court held that the Fourteenth Amendment, while prohibiting any form of invidious discrimination, did not bar cognizance of race in a proper effort to eliminate racial imbalance in a school system. The action was dismissed on the finding that plaintiffs presented no claim on which relief could be granted.

Olson v. Board of Education of Union Free School District No. 12, Malverne, New York
250 F. Supp. 1000
United States District Court, Eastern District,
New York, February 11, 1966.

(See Pupil's Day in Court: Review of 1965, Vetere v. Allen and Hummer v. Allen, p. 37, and Review of 1964, p. 49.)

In earlier litigation in the New York state courts, white parents were unsuccessful in their attempts to overrule the 1963 determination of the state commissioner of education ordering the Malverne school district to reorganize the school attendance zones of its three elementary schools so that all pupils in grades 4 and 5 would attend the Woodfield School and all pupils in kindergarten through the third grade would attend the other two elementary schools. The purpose of this order was to correct racial imbalance in the Woodfield school which then had a 75-percent Negro student body.

The commissioner's order to reorganize the attendance zones followed an appeal by parents of Negro children in the Woodfield school who claimed they had been deprived of equal educational opportunities when the school board refused to transfer them to other schools, and after consideration of recommendations of a three-member committee the commissioner had appointed to study the problems in the school district. In his order, the commissioner found that the Woodfield school was racially imbalanced, but that the educational standards there were not below the other two elementary schools, and that the school board had not been arbitrary in establishing or refusing to change the school attendance lines. The basis for the determination was that the racially imbalanced school was a deprivation of equal educational opportunities, predicated on psychological and sociological knowledge.

The New York Court of Appeals held that the determination of the commissioner that racial imbalance in schools (with a 50-percent or more enrollment of Negro pupils) is educationally unsound and his direction to local school boards to take steps to correct this condition in implementation of the policy of the Board of Regents that racially imbalanced schools are educationally inadequate, was neither arbitrary nor illegal. Therefore, the determination was not subject to judicial review.

The present suit in the federal district court against the school district and the state commissioner of education was initiated by a white parent of a fifth-grade child on the grounds that the commissioner's action violated his rights under the Fourteenth Amendment and the 1964 Civil Rights Act. An injunction was sought to restrain the enforcement of the order to reorganize the attendance zones of the district. It was claimed that the child was deprived of his constitutional rights because he was excluded from his neighborhood school and required to attend a distant school outside his residential neighborhood solely because of his race. Defendants objected to the suit on the grounds that the federal court lacked jurisdiction, that the action was precluded by the previous state litigation and decision, and that the plaintiff failed to state a claim for relief.

The federal district court held that this action was not barred by the decision of the state court since the parties are different, there is uncertainty as to whether the New York Court of Appeals had reached the constitutional question, and that relief is being sought also under the Civil Rights Act of 1964, enacted after the trial in the state court. Therefore, the substantive merits of the controversy, the alleged denial of plaintiff's rights under the Fourteenth Amendment, must be considered.

Plaintiff's claim that Section 401 (b) of the Civil Rights Act of 1964 barred any plan to correct racial imbalance was rejected as being without merit. The court said that the definition of desegregation in that section relates to government aid programs in the desegregation of the schools, and it has no relevance to the legality or constitutionality of a plan to correct racial imbalance.

The issue here, as phrased by the court, was whether racial imbalance, per se, under certain circumstances created unequal educational opportunities for minority groups, and if so, may it be corrected without infringing the constitutional rights of others.

The court found that the commissioner's determination that the Woodfield School was racially imbalanced (91 percent Negro on the date of this judicial decision) and that the attendance zones should be reorganized to eliminate the excessive imbalance, was not constitutionally arbitrary, since it was based on expert opinion on which administrative decision may rest. The court said that while classifications based on race alone are "constitutionally suspect" under the Equal Protection Clause, such a classification is not proscribed if it is necessary to accomplish a permissible state policy--that of providing equal educational opportunities for minority groups. By the commissioner's action, the court pointed out, plaintiff was not required to attend a school which, under similar circumstances, other pupils regardless of race, are not also required to attend. The motivation for the action is not discrimination, but assistance to minority groups in providing educational opportunities.

For these reasons, the court ruled that the complaint failed to state a cause of action and must be dismissed.

Olson v. Board of Education of Union Free School District No. 12, Malverne, New York
367 F. (2d) 565
United States Court of Appeals, Second Circuit, October 14, 1966.

(See case digest above.)

The Malverne school district assigned pupils to school on the basis of residence; this resulted in a high proportion of Negro pupils in one school and low proportions in others. Responding to pressure from Negro parents who were unsuccessful in having their children transferred, the district established a single, district-wide attendance zone for grades 4 and 5, and two attendance zones for kindergarten through grade 3. The father of a fifth-grade pupil brought a proceeding to contest the rezoning which shifted his child to another school.

The court did not consider all the arguments presented, but found one to be dispositive of the case: By the time the case came to trial, the child involved had graduated from the fifth grade and had entered the sixth grade. Since the order attacked did not alter the arrangement for pupils in grades 6 to 12, the child could no longer claim that he was adversely affected. The proceeding was therefore dismissed as being moot.

North Carolina

In Re Assignment of James Varner
146 S.E. (2d) 401
Supreme Court of North Carolina, February 4, 1966.

A ninth-grade pupil resided in Randolph County, but had never attended a school in that county. For 30 years, Randolph County children in his area attended Davidson County schools without paying tuition, by agreement of the two county boards of education. His parents wanted to continue his attendance in Davidson County schools, but his school board assigned him to a Randolph County school in line with a school desegregation plan.

The parents filed a timely application to reassign the pupil to the Davidson County school, and appealed to the court when the application was denied. The reasons for requesting the reassignment were that the Davidson County school was closer and had available a more suitable curriculum, and the 30-year precedent. The pupil lived 19.2 miles from the Randolph County school but only 7.4 miles from the Davidson County school. The Randolph County school was shown to be overcrowded, while the Davidson County school had room for more pupils and was willing to accept him without tuition charge. For its part, the Randolph County board offered evidence that its school was no longer overcrowded and introduced a letter from the United States Commissioner of Education endorsing the Randolph County desegregation plan which provided that no pupils residing in the county would be assigned to outside schools.

By statute, the business of pupil assignment was left to the board of education which was to operate under the criterion of the pupils' best interests. Its administration would not be interfered with as long as pupils' health, safety, and education were not endangered and as long as school administration was not upset. The law further provided that a child residing in one administrative unit might be assigned to a school located in another administrative unit. The legislature could not be said to have intended that a board might agree never to assign a pupil to another county when his interests militated in that direction, said the court.

Further, the Civil Rights Act had no application, for there were no indications that race had anything to do with the application for reassignment in this instance. On the contrary, the record showed only that the pupil wished to return to the school district where he had always happily attended and where his friends were. To force him to attend another school would make him a captive of the schools of the area where he resided, however inadequate they might be for his needs.

For these reasons, the court upheld a temporary injunction permitting the pupil to continue attending the Davidson County school and further decreed that a final decision must be reached through trial, since there were factual questions involved.

Wheeler v. Durham City Board of Education
363 F. (2d) 738
United States Court of Appeals, Fourth Circuit, July 5, 1966.

(See Pupil's Day in Court: Review of 1965, p. 40; Review of 1963, p. 25; Review of 1961, p. 29.)

The issue in this appeal by Negro pupils and their parents was the assignment of teachers in the Durham public schools on a basis of race. The board policy had been to employ Negro teachers in schools attended by Negro pupils and white teachers in white schools. Although schools were desegregated in terms of pupils, the board voted to continue its existing teacher assignment policy, but allowed for exceptions for "valid and sound educational reasons."

The lower court had refused to order the assignment and employment of teachers on a nonracial basis because of the absence of teachers as parties and the failure of the Negro pupils and parents to prove a substantial relationship between integrated faculties and the school desegregation plan. (249 F. Supp. 145, January 19, 1966.) On appeal, this decision was reversed. The court held that the board's method of assigning teachers was unconstitutional.

The court upheld the right of the Negro pupils and parents to question faculty assignments on their own. In the absence of teachers as parties, the court did not believe that the order should require any involuntary assignment or reassignment of teachers. Instead, the order should encourage interracial transfers for willing teachers and future vacancies should be filled by the best qualified candidates regardless of race.

The court stated that under the Supreme Court decision in Bradley v. School Board (see Pupil's Day in Court: Review of 1965, p. 49), removal of race considerations from faculty selection and allocation was, as a matter of law, inseparable from the abolition of pupil desegregation. Hence, no proof of the relationship between faculty assignment and pupil assignment was required. The only factual issue was whether race entered into teacher placement as a factor. Since findings of fact showed that race was such a factor, assigning Negro and white teachers to separate faculties was ordered terminated.

South Carolina

Miller v. School District No. 2, Clarendon County, South Carolina
253 F. Supp. 552
United States District Court, District of South Carolina, Charleston Division, April 21, 1966.

Negro pupils sought to enjoin their local school district from operating a compulsory biracial school system; maintaining a dual school zone pattern based on race; assigning pupils to school on the basis of their color; assigning teachers, principals, and other school personnel to schools on a color basis; and continuing their official functions of budgeting, contracting, and policy-making in such manner as tended to perpetuate the segregated system.

The school district responded that it had instituted a free transfer policy without regard to color, but applications by Negro pupils to transfer to white schools had been rejected because each Negro pupil's record indicated that a transfer would have been academically inadvisable and injurious to the school district's educational procedures and duties. Factual findings, however, showed that in terms of salaries, buildings, land, equipment, libraries, courses, and sizes of classes, white educational facilities were much superior to those available to Negro pupils.

The court held that the present plan was inadequate because it lacked a provision for mandatory exercise of free choice by all pupils annually, and because it established priorities of preference on bases such as "availability of space in schools other than the school from which and to which entry is sought" and the distance the pupil lives from the school. The court listed a number of decisions setting out standards for the adoption of a legal free-choice plan. The school board was ordered to cease its present discriminatory practices and substitute, amend, or replace its pupil assignment plan to correct Negro pupils' constitutional deprivations.

Miller v. School District No. 2, Clarendon County, South Carolina
256 F. Supp. 370
United States District Court, District of South Carolina, Charleston Division, June 14, 1966.

(See case digest above.)

The Clarendon County school district promulgated a school desegregation plan whereunder pupil assignment was ostensibly to be made without regard to race but by several other factors, such as whether the pupil's educational progress could be met by the school to which assignment was sought, such school's capacity, availability of space in all schools, and the distance which the pupil lived from the school. When transfer to the school of preference could not be honored because of administrative difficulties, pupils were to attend schools they had attended the previous year. But parents had the right to apply to the superintendent for reassignment on application forms provided and received by the superintendent.

Negro parents and the United States attorney general complained that this new plan was substantially the same as the old one--a dual school system based on race.

The court decided that the plan was legally insufficient, and ordered that the plan be modified in accord with the principals set forth in the opinion. It held that in the interests of furthering the desegregation plan without delay, the plan should provide that any transfer request form be acceptable if it is intelligible and apprises the school officials of the pupil's name and his choice of school. Further, such forms should be made immediately available to the general public.

The greatest problem inherent in the free-choice plan, in the court's view, was the matter of priority in registration at the chosen school which could not accommodate all who chose to attend it. The court held that availability of space in the school to which entry was not sought was not a logical criterion for the consideration of preferences for schools of the first choice. Only lack of space available in the chosen school was a valid reason to deny a pupil's choice. Similarly, the distance the pupil lived from the school was deemed a poor standard in considering choice of school. "Proximity to the school" was held to be a better consideration.

The court also found that segregated pupil placement was perpetuated by a provision in the challenged plan that pupils were to be assigned to the school they attended the preceding year when a transfer could not be honored because of administrative difficulties. To remedy this fault, the court suggested that the pupils be given a second choice of school by the same notice method as recommended for indicating his first choice. And where the assignment made did not satisfy the pupil or parent, provision should be made for reconsideration.

The plan, subject to modification pursuant to the principles set out by the court and in accordance with a predetermined time schedule, was to be implemented at all grades. Moreover, the nondiscrimination was also to be extended to allied programs beyond the grade schools, such as adult education, remedial courses, and preschool activities, so that these services would be made available to all eligible participants without regard to race or color.

Texas

Hightower v. McFarland
355 F. (2d) 468
United States Court of Appeals, Fifth Circuit,
January 18, 1966.

A Negro pupil assigned to an all-Negro high school was denied a transfer to an all-white high school considerably nearer his home. He sued the Houston Independent School District to compel his transfer, asserting that he was entitled to attend the school nearest his home and that his transfer application was denied solely because of his race.

The school district moved to dismiss the action on the grounds that the segregation practices in the system were set aside in Ross v. Dyer (see Pupil's Day in Court: Review of 1963, p. 31), a class action brought on behalf of all Negro children in the school system, including the pupil in the present suit; that the judgment in the Ross case was final and binding on this pupil, and, therefore, the district court was without jurisdiction in the present case. The district court agreed and dismissed the case.

On appeal the pupil argued that he was being denied a personal right because of his race or color and that this raised a federal constitutional question. Since by statute the district court is vested with original jurisdiction over any civil action brought by a person seeking redress of any right under the federal Constitution, the appellate court held that the district court has and is bound to exercise jurisdiction over the present case. Its failure to do so was error. The decision was reversed and the case remanded for further proceedings.

Virginia

Bell v. School Board of the City of Staunton, Virginia
249 F. Supp. 249
United States District Court, Western District, Virginia, Harrisonburg Division, January 5, 1966.

Negro school children in Staunton, Virginia, brought a class suit against the school authorities, seeking to desegregate the biracial school system.

During the 1965-66 school year, the school system had a pupil population between 4,500 and 4,600 pupils with 600 or 13 percent Negro. In that year, 192 Negro pupils had elected to attend predominantly white schools under the freedom-of-choice plan adopted by the school board. This plan, filed with the court at the time of the hearing, provided for desegregation of four grades a year over a three-year period, with desegregation of all grades to be completed at the start of the 1967-68 school year. The plan was approved by the U.S. Department of Health, Education, and Welfare after the school board advised the department that it decided to abandon all its Negro schools in 1967-68 and to assign all pupils to the remaining schools in the system on a unitary geographic basis.

The court approved the switch to the geographic plan, noting that since Negro and white citizens were spread throughout the county, there would be no problem of an all-Negro school zone. However, the court concluded that the delay until 1967-68 in instituting the geographic plan could not be allowed to deprive Negro pupils of their basic rights in the interim. The initial assignments of pupils in the remaining grades not to be reached for desegregation until in 1967-68 under the freedom-of-choice plan were found to be discriminatory. Since there were no administrative reasons to justify the delay in desegregating the remaining grades, the court ordered the adoption of complete freedom of choice for all grades for the 1966-67 school term.

On the matter of teacher assignments, the court said that the observations made the companion Augusta County school case (see Kier v. County School Board of Augusta County, Virginia, p. 28 of this report) equally applicable here, and that faculty and administrative staff integration must be brought about. However, under the particular circumstances in the Staunton school system, where complete integration of pupils of a geographic plan is foreseeable at the end of an additional year and the Negro schools are being phased out, the school authorities were entitled to some leeway on faculty integration. The court ordered integration of the faculty and staff by the beginning of the 1967-68 school year. For 1966-67, any Negro teachers no longer needed in Negro schools because of a decline in enrollment were to be considered for employment in the predominantly white schools on the same nondiscriminatory basis as white teachers now employed in the school system.

The court held further that the plaintiffs were entitled to none of the additional relief prayed for in their complaint. The court stated that reference should be made to the companion Augusta County case for a discussion of any similar question presented but not discussed in this opinion. Specifically, the court noted that the requirements to be imposed in its final order with respect to the freedom-of-choice plan for the Staunton school system would be identical to those stated in the Augusta case.

Kier v. County School Board Of Augusta County, Virginia
249 F. Supp. 239
United States District Court, Western District, Virginia, Harrisonburg Division, January 5, 1966.

A class suit was brought on behalf of Negro children to desegregate the public schools in rural Augusta County, Virginia. Prior to the 1965-66 school year, a biracial school system was in operation for over 10,000 children in the county, about 500 of them Negro. In all, some 18 Negro pupils had been assigned to white schools at their request. The school faculties were segregated.

In preparation for the 1965-66 school year and in order to comply with the 1964 Civil Rights Act, the school authorities took their first affirmative steps to bring about desegregation on a freedom-of-choice basis. The plan adopted was to be accomplished over a three-year period by desegregating four grades each year, but it was later amended to apply to all grades without delay. Under the plan, parents were to be given notice and time to decide on any school in the system for their children and each year by June 1 were required to affirmatively select a school. The pupils would be assigned to the chosen schools, but in the event of overcrowding of any particular school, proximity to the school was to be the determining factor. There was no provision in the plan for faculty desegregation other than for the holding of joint meetings and joint inservice training programs, and the statement that in making assignments teachers would be evaluated on a nondiscriminatory basis in terms of overall preparation and qualifications for positions desired.

Plaintiffs objected to the plan, contending that freedom of choice, per se, is not constitutionally acceptable as a final plan of desegregation where there are no administrative difficulties barring the way to complete integration on a unitary geographic basis. They argued that the freedom-of-choice plan was defensible only where it could achieve better racial balance in the schools to overcome the problem of de facto desegregation in urban areas with clearly delineated Negro communities.

The court ruled that a freedom-of-choice plan is a constitutionally acceptable device to achieve desegregation of the schools, and such a plan, fairly applied, is constitutionally sound in a rural area although less integration may result than under a geographic plan. The court approved the freedom-of-choice plan for the Augusta County school system as it related to pupil assignments. Its order provided for the steps to be followed with respect to adequate notice and information to parents as to the pupils' rights to attend any school in the school system serving their grades, and the time allowed for distribution and return of the registration forms.

Plaintiffs also requested relief from discriminatory practices in the assignment of teachers and administrative personnel. On this issue, the court concluded that where Negro pupils have shown the existence of segregated faculties, there is no need for them to prove actual adverse affects on them because of segregated faculties. The court said that where the school authorities have chosen to adopt a freedom-of-choice plan which imposed on the individual pupil or his parent the duty of choosing the school he will attend, the framework of the plan must be fair and include the integration of teachers and administrative staffs. Finding no justification for continuing to maintain segregated school faculties beyond the 1965-66 school year, the court entered an order enjoining the school board from continuing this practice, and ordered the school faculties and administrative staffs to be desegregated completely for the 1966-67 school term. As a guideline for carrying out this mandate, the court said that insofar as possible, the percentage of Negro teachers in each school should approximate the percentage of Negro teachers in the entire school system.

While approving the freedom-of-choice plan, the court stated that it did not intend to foreclose a change of method for assigning pupils. The school board could continue to operate under the freedom-of-choice plan or may use a unitary system of geographic zoning with a superimposed plan of free transfers. Under either of these plans, however, teacher desegregation must be adhered to under the guideline established by the court. Or the school board could adopt a strictly geographic plan of pupil assignment drawn on a nondiscriminatory basis without free transfer provisions. This type of plan also would not do away with the necessity of teacher and staff integration, but the guideline need not apply, and the board may retain free rein in teacher assignments and may fairly be allowed to follow the racial composition of each school in the system.

To give the Augusta County school board an opportunity to consider the court's decision and to decide its future course of operation under the options outlined, the board was instructed to submit a report on the steps taken in furtherance of the court's order, together with an amended to new plan upon the completion of pupil and teacher assignments for the 1966-67 school year.

Thompson v. County School Board of Hanover County, Virginia
252 F. Supp. 546
United States District Court, Eastern District, Virginia, Richmond Division, January 27, 1966.

Negro pupils and their parents brought a class suit asking that the Hanover County school authorities adopt and implement a plan which will provide the prompt and efficient racial desegregation of the school system; and that the school board be enjoined from building schools or additions, and from purchasing school sites pending the court's approval of a plan. They also asked for an award of attorneys' fees and costs. The school officials denied the allegations of the complaint, and asked that it be dismissed for failing to state a claim on which relief could be granted.

The county had a school enrollment of about 7,400 pupils, about one-third of them Negroes. Pupil assignments were based on dual attendance areas which overlapped for the elementary schools. Under the State Pupil Placement Board assignments in 1965-66, a total of 50 Negro pupils attended white elementary schools or white high schools. This action was started in March 1965 after the school board failed to act on the request of Negro citizens to adopt a desegregation plan.

Subsequently, in compliance with the 1964 Civil Rights Act, the school board adopted a freedom-of-choice desegregation plan which the U.S. Commissioner of Education had approved. The plan provided that starting with the 1966-67 school year and annually thereafter, preregistration of first-graders to any school of their choice would take place over a five-day period in March, and again in August. No choice would be denied except for overcrowding in a school, in which event the child would be assigned so that he may attend the choice nearest his home. No transfers would be allowed during the year except for a change in residence or for similar nonracial reasons. Transportation would be provided by the school board without regard to race or color, but only to the nearest formerly all-white or formerly all-Negro school in which there was place for the pupil and to which he was assigned under the plan. Similar freedom-of-choice provisions were applicable to all other pupils already in the school system, including those about to enter high school. The pupils were to receive instructions and forms on which to exercise their choice at least 14 days prior to April 10, the cut-off date for registration. All services, facilities, and programs affiliated with or sponsored by the school system would be administered on a nonracial basis.

As to desegregation of faculty and administrative personnel, the plan provided that applicants for positions would be considered on the basis of preparation and qualifications, and race would not be a factor. Steps would be taken to desegregate the faculty in 1965-66, at least with respect to joint faculty meetings and joint inservice training programs; teachers and staff serving more than one school would be assigned to serve schools, teachers, and pupils, without regard to race. The school system would not demote or refuse to re-employ principals, teachers, and other staff on the basis of race or color, including any demotion or failure to re-employ staff members because of actual or expected loss of enrollment in a school.

The plaintiffs attacked the plan for its failure to assign pupils on a geographic basis, and contended that the plan did not satisfy the board's obligation to eliminate racial segregation.

The court found that under the transportation policy in the plan, the freedom of choice was for all practical purposes limited to the nearest white school and the nearest Negro school and that the retention of this dual school system could not be approved. Further, the April 10 cut-off date for making the choice of school was too early and unduly restrictive.

On the basis of its decision in Wright v. County School Board of Greenville County, Virginia (See p. 31 of this report), the court concluded that the lack of geographic zones did not invalidate the plan, but that the limitations in the transportation policy and the cut-off date for registration did invalidate it. Further, the provisions for staff desegregation were too limited. The school board was given 90 days to submit amendments to its plan dealing with staff assignment and practices, the transportation policy, and registration dates.

The request for an injunction to restrain school construction and the purchase of school sites was denied, but the court said that the effect of the construction could be reviewed and modified, if necessary, to insure that the construction would not be used to perpetuate segregation. Plaintiffs' request for an award of counsel fees was also denied.

Turner v. County School Board of Goochland County, Virginia
252 F. Supp. 578
United States District Court, Eastern District, Virginia, Richmond Division, January 27, 1966.

In this class action, Negro pupils and their parents sought an injunction to require the

Goochland County school board to adopt and implement a school desegregation plan. Also requested was an injunction to restrain the school board from building schools and additions and from purchasing school sites pending the court's approval of a plan. Another request was for attorneys' fees and costs.

Rural Goochland County, with a school population of 1,100 Negro pupils and 900 white pupils, operated segregated schools. The elementary schools had no clearly defined attendance zones, although they generally served the areas adjacent to them. Prior to 1965-66, no Negro pupils had applied for admission to white schools. In June 1965, after this action was started, the school board approved a freedom-of-choice plan to comply with the 1964 Civil Rights Act. The plan, as later revised, was approved by the U.S. Commissioner of Education in September 1965. Under the plan 62 Negro pupils were transferred to white schools for the 1965-66 school year. The 1965 pre-school general faculty meeting was desegregated. School faculties remained segregated.

The freedom-of-choice plan provided for desegregation over a three-year period, affecting grades 1, 2, 8, and 12 in 1965-66, extending to grades 6, 7, and 9 in 1966-67, and embracing all grades in 1967-68. Each pupil or his parent was required annually to make a choice of school. Forms for this purpose were to be sent home at least 15 days before May 20, the returnable date. Additional registration periods were set in the fall. For high-school pupils, no choice was to be denied. In the elementary schools, no choice was to be denied except for overcrowding in a school, in which case pupils choosing such school would be assigned so that they may attend the school of their choice nearest their homes. Teachers, principals, and other school personnel were not permitted to advise, recommend, or otherwise influence choices. Pupils in grades not yet reached under the plan's schedule, also had the right to apply for transfers to schools of their choice.

The plan provided for transportation to all pupils in each school on an equal basis without discrimination as to race or color. To the maximum extent feasible, buses would be routed to serve each pupil choosing any school in the system. In addition, there would be no racial discrimination with respect to all services, activities, facilities, and programs sponsored by or affiliated with the school system.

As to faculty desegregation, the plan included the following: integrated faculty meetings and inservice programs in 1965-66; beginning in 1966-67, the race of pupils would not be a factor in initial assignment of teachers, administrators, and other staff to a particular school or within a school; and the school system would not demote or refuse to re-employ principals, teachers, and other staff members on the basis of race or color, including demotion or failure to rehire because of an actual or expected drop in enrollment in a school.

Plaintiffs objected to the plan because it failed to assign pupils on a geographic basis and because it did not integrate the teaching staff.

Pursuant to its decision in Wright v. County School Board of Greenville County, Virginia (see p. 31 of this report), the court held that the lack of assignment of pupils by geographical zone did not invalidate the plan. Nevertheless, the plan was held to be defective because its provisions for faculty desegregation were too limited. The court allowed the school board 90 days to submit amendments to the plan on faculty assignments and practices.

Plaintiffs' request for attorneys' fees and costs was denied, as was their request for an injunction to restrain the school board from proceeding with new school construction and the purchase of school sites. The court said the effect of construction after completion could be reviewed and the desegregation plan modified, if necessary, to insure that construction was not used to perpetuate segregation.

Wanner v. County School Board of Arlington County, Virginia

357 F. (2d) 452
United States Court of Appeals, Fourth Circuit,
February 7, 1966.

(See Pupil's Day in Court: Review of 1965, p. 57; Review of 1962, Thompson v. County School Board of Arlington County, Virginia, p. 38.)

White parents sought a court order against the Arlington County school board to enjoin it from carrying out its plan to desegregate the county's all-Negro Hoffman-Boston Junior High School and to redistrict the school system's junior high-school attendance areas.

The school board claimed it acted in the belief that the plan was required to comply with earlier court desegregation orders as well as to improve the educational system in these areas by enlarging the student body to make possible more offerings and other advantages. The new school districting plan was adopted after a citizens' Criteria Committee appointed by the school board reported early in 1965 that the existing boundaries of the Hoffman-Boston District were completely artificial. The new plan, based on the committee's recommendations, redistricted three junior high-school districts in the county into two new districts, with the racial composition in each 75 percent white and 25 percent Negro, thereby reducing the racial imbalance that existed previously. The new

Jefferson district was to operate its junior high-school classes in two buildings, one housing the seventh-graders, and the other, the former Hoffman-Boston school building, housing the eighth- and ninth-graders.

White plaintiffs attacked the plan on the grounds that the school board took race into account in redrawing the boundary lines, and that they were denied equal educational opportunities because the newly created Jefferson district would be maintained as a dual-building district, separating the seventh-graders from the eighth- and ninth-graders.

The district court held that the desegregation of the Hoffman-Boston Junior High School deprived the white plaintiffs of their rights under the Fourteenth Amendment and under the 1964 Civil Rights Act for these reasons: the plan resulted from the board's erroneous belief that it was under a court order to close the Hoffman-Boston school; racial balance was the prime criterion used in redrawing the boundaries for the junior high schools; considerations based on race are constitutionally impermissible; and there was no evidence to support the school board's contention that the plan was educationally more desirable than the previous arrangement. This decision was reversed on appeal.

The appellate court held that the district court was clearly in error in ruling that the school board in the existing circumstances was prohibited from considering race in redrawing the school attendance lines. The opinion states:

> When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions--especially conditions that have been judicially condemned--their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the "consideration of race" which the Constitution discountenances.

The court held further that the school board acted within its lawful discretion when it abandoned the gerrymandered lines established in the past to maintain racial segregation, and adopted legally permissible geographic lines. The court was also of the view that the district court erred in its factual finding that the dual-building Jefferson district impaired the educational opportunities of the junior high-school students in this district. To the contrary, all the evidence submitted showed that the arrangement, despite the dual-building feature, was educationally more advantageous. The court stated that the school board was under a duty to rearrange the gerrymandered districts, and it did so in such a way as to achieve what it considered optimum educational advantages under all the circumstances. The fact that the plaintiffs would have preferred a plan retaining the three-district system with rearranged boundaries provided no valid constitutional grounds to upset the board's action. Further, there was no showing that the plan had unconstitutionally deprived any of the plaintiffs of equal educational opportunities because of their race.

In reversing the judgment, the appellate court concluded that the district court exceeded its authority in overriding the school board's action taken with the genuine purpose of complying with the law and enhancing the county's educational system.

Wright v. County School Board of Greenville County, Virginia

252 F. Supp. 378
United States District Court, Eastern District, Virginia, Richmond Division, January 27, 1966.

Negro children and their parents brought a class action against the school officials of the Greenville County school system asking that they be required to adopt and implement a school desegregation plan, and that they be enjoined from building schools or additions and from purchasing school sites pending the court's approval of a plan.

Rural Greenville County serves about 4,500 pupils, three-fifths of them Negro. Prior to September 1965, the county operated segregated schools based on dual school attendance areas. This suit was started in March 1965 after the school board failed to comply with the petition of Negro citizens to desegregate the schools. Thereafter, the school board adopted a freedom-of-choice plan to comply with the 1964 Civil Rights Act. The plan was amended several times, and was approved by the U.S. Commissioner of Education in January 1966 after the hearing in this case. In September 1965, a total of 72 Negro pupils, upon their applications, were transferred to white schools. School faculties were completely segregated.

The school board's plan, applicable to the 1966-67 school year and annually thereafter, provided a choice of school to each pupil in or entering the school system for the first time. Forms on which to make the choice were to be sent home on May 1 and were returnable within 15 days. Each pupil and his parent or guardian was required to exercise his choice of school, and no pupil was to be admitted until the choice was made. Teachers, principals, and other school personnel were not permitted to advise, recommend, or influence the choice or to favor or penalize children because of the choices. No choice was to be denied, except for overcrowding of a school, in which event preference would be given to those children living closest to the schools of their choice. Transportation was to be provided by the school board to pupils on an equal basis without segregation, and buses were to be routed to the maximum extent feasible so as to serve each pupil. All services, facilities, activities, and programs sponsored by or affiliated with the school would be free of discrimination.

The plan provided further that all teachers would be assigned on the basis of objective criteria. Steps to be taken in 1965-66 for faculty desegregation would include at least faculty meetings and inservice programs on a completely integrated basis. The school system would not demote or refuse to re-employ principals, teachers, and other staff members on the basis of race or color, and any reductions in staff required because of a loss in pupil enrollment would be free of racial discrimination.

Plaintiffs attacked the plan for its failure to assign pupils on a geographical basis. They contended that the freedom-of-choice plan did not satisfy the school board's obligation to eliminate racial segregation from the school system.

The court held that the requirement of a mandatory choice of school to be made annually by all pupils, Negro and white, satisfied constitutional requirements, and that the plan was adequate for transition of the school system, with one exception. The plan was held to be defective only in one respect--that the provisions relating to faculty desegregation were too restrictive. A satisfactory freedom-of-choice plan, the court said, must include the employment and assignment of staff on a nonracial basis. It pointed out that the school board had the primary responsibility to select the means to achieve faculty desegregation. The court was of the opinion that the board should have the opportunity to appraise the time and methods required, but warned that token assignments will not suffice. The court deferred approval of the plan, allowed the school board 90 days to amend the provisions dealing with employment and assignment practices, and set out the principles to be observed: elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date and the plan must contain well-defined procedures which will be put into effect on definite dates.

The court concluded that new construction of school buildings and additions should not be enjoined, as plaintiffs had requested, but it said that the new construction could not be used to perpetuate segregation. If the new facilities were put to use by the board in a manner that could cause the freedom-of-choice plan to become invalid, then it will be necessary to modify the plan.

Plaintiffs' motion for counsel fees and costs was denied since at the time the suit was filed, no Negro pupils were being denied transfers to white schools.

LIABILITY FOR PUPIL INJURY

Arizona

Morris v. Ortiz and School District No. 1 of Pima County, Arizona
415 P. (2d) 114
Court of Appeals of Arizona, June 14, 1966.

The parents of a boy injured in an auto mechanics class filed suit to recover damages for the injury. Defendants were the pupil's teacher and the school district. The teacher was charged with negligence. He had 13 years' teaching experience in auto mechanics.

The facts were that a group of four or five boys were converting an automobile model for demonstration use. They had severed the top of the car, lifted it off the car frame and placed it on the workshop floor, exposing sharp and jagged metal edges along its sides. Needlessly, some boys decided to reshape the top and began jumping on it. The teacher testified that he told them to stop, and to throw the car top in a junk heap behind the school. One boy testified that the teacher expressed a desire to have the top bent or folded. There was no leadership or plan as to disposing of the top. The injured boy along with some others lifted the top to remove it from the room when two other boys not knowing of the plan to remove the top, jumped off the car onto the top causing it to slide over the boy's fingers and cut him. At that time, the teacher was circulating about the room, supervising various projects then in progress and was 5 to 10 feet away when the accident happened.

At the close of plaintiffs' case, defendants moved for a directed verdict. The trial court granted this motion on grounds that plaintiffs' evidence did not make out a case of defendants' actionable negligence or proximate cause. On appeal by plaintiffs, this judgment was reversed and the case was remanded for retrial.

The court said that generally a person has no duty to control a third person's conduct to prevent harm to another, unless there is a compelling special relationship. Such relationship includes that of pupil and teacher. The teacher has a duty to control the conduct of pupils in his class to prevent them from harming themselves or other pupils. The court recognized the impossibility of a teacher supervising every minute detail of every project, but it believed that a jury might find that a prudent auto mechanics teacher would have given more personal supervision to the somewhat dangerous operation of removing the car top, or would have appointed a group leader to coordinate the activities of the boys removing the top. The nature of the task required team effort, and the accident could have stemmed from lack of coordination.

It was possible, the court further observed, that the trial court concluded that the injuries were caused by the independent, intervening act of the pupils, relieving the teacher of liability. Such conclusion would be erroneous, since the teacher might have reasonably foreseen such consequences and should have acted to thwart them. For these reasons, the court decided that reasonable minds might disagree whether the teacher was reasonably prudent as a teacher and the question was therefore one of fact for a jury.

California

Wall v. Sonora Union High School District
50 Cal. Rptr. 178
District Court of Appeal, Fifth District, California, March 17, 1966; rehearing denied, April 13, 1966. Hearing denied before the Supreme Court of California, May 11, 1966.

A high-school student sought court permission to file a late claim for damages with the school board after the board had denied the request.

While playing in an interschool basketball contest on February 25, 1964, the student, then under 17 years of age, was struck on the head by a player on the opposing Sonora team. It was alleged that this player was known by his school board to be vicious and given to striking opposing players. The struck student later became a ward of the juvenile court and was sent to a state hospital for observation and care. His father was notified by the hospital staff on February 18, 1965, that the boy had suffered brain damage, probably owing to the blow received in the basketball game. On March 5, 1965, a consulting physician confirmed that the boy's brain damage was in fact caused by the blow. On March 11, 1965, a year and 14 days after the blow was suffered, the student applied for leave to present a late claim. The school board denied the application.

Under California law, a personal injury claim against a public entity must be presented not later than 100 days after the accrual of the cause of action. But if the claim is not filed within the 100 days, written application can be made to the public entity for permission to present a claim within a reasonable time, but not to exceed one year from the time the cause of action accrued. Permission was to be granted if the delay in filing was for any of the justified reasons specified in the law, including that the claimant was a minor.

The trial court denied the student's request to file the late claim, since under the statute and under a prior ruling of the state supreme court, after the expiration of one year from the date of the accident, the court lacked jurisdiction to require the school board to permit the filing of a late claim. The decision was affirmed on appeal.

Louisiana

Nash v. Rapides Parish School Board
188 So. (2d) 508
Court of Appeal of Louisiana, Third Circuit,
July 1, 1966.

A parent sued the school board and its insurance carrier to recover damages for injuries his son sustained on school grounds while waiting for a school bus to take him home. The boy was playing with or teasing a little girl, when another girl struck him in the eye with a stick. As a result of this injury, the eye was subsequently removed. The claim of negligence on the part of the school board, its agents, teachers, and employees, was that the board failed to provide adequate supervision of the children on the school grounds after school was let out.

It was also claimed that the school bus driver was negligent in not taking the boy to the hospital immediately after learning that he had been hit. As to the action of the bus driver, the court concluded that the evidence did not sustain the contention that the bus driver was derelict in his duty to the boy, since it was clear that he did not fully appreciate the seriousness of the injury, and he, in good faith and with the limited knowledge he had, was correct in taking the boy home.

The court ruled further that the plaintiff failed to prove that there was dereliction of duty by the school teachers or the bus driver, and also failed to show any causal connection between alleged failure to provide adequate supervision and the accident.

The court remarked that no one can predict what the actions of children eight or nine years of age will be while playing on school grounds. Even if it could have been anticipated that one child while teasing another would be struck in the eye by a third child, there was no showing of any likelihood that the accident could have been prevented even if a teacher was standing right there. The court said such accidents happen so quickly that unless there is direct supervision of every child, which the court recognized as being impossible, the accident was almost impossible to prevent.

Michigan

King v. Greyhound Corporation
144 N.W. (2d) 841
Court of Appeals of Michigan,
September 27, 1966.

A six-year-old child was struck and killed by a car after she alighted from a school bus operated by the defendant under contract with the local board of education. Her father brought a wrongful death action. A jury returned a verdict against the father. On his appeal three questions were raised.

The first question was whether the trial court erred in not allowing the jury to pass on the validity of a release and covenant not to sue. The validity of the document was never submitted to the jury. The jury was charged that defendant's mere introduction of a release was invalid in view of the covenant not to sue. The court regarded the judge's handling of this question as eminently fair and found no error.

The second question was whether the trial court had erred in instructing the jury, "There may be more than one proximate cause; there may be two." The court found no error in this or in the charge as a whole. The quoted statement was held not erroneous in its context. The repetition of the phrase "proximate cause" at least seven times in the charge to the jury was sufficient, in the court's opinion, to make clear to the jury that there could be more than one proximate cause in a negligence action.

The last allegation of error was that the court improperly read to the jury the defendant's pre-trial version of the accident. Plaintiff argued that there was no evidence on which the jury could find the facts to be as alleged in the defendant's version. The version involved the distance traveled by the school bus driver, the child's running across the street as causing her death, the intervening proximate cause of an oncoming driver, and statutory requirements of bus drivers.

The court found no merit to this allegation of error for the reason that the defendant's pre-trial statement had a reasonable relevance, could be supported by evidence, and concerned proper questions of law. For these reasons, decision for the defendant was affirmed.

Picard v. Greisinger
138 N.W. (2d) 508
Court of Appeals of Michigan, Division 1, December 20, 1965.

Parents brought an action to recover for personal injuries sustained by a pupil in a gym class against the school district, the school board, and the gym teacher. The complaint alleged that the pupil was injured in class when he was struck on the head by a basketball thrown at him intentionally and forcibly by the teacher at the time when the latter knew or should have known the pupil was unprepared to catch it. Plaintiffs pleaded that this negligence on the part of the teacher was imputed to the school district and school board in that they retained the teacher in employment even though they knew or should have known that he was of violent disposition and had or was likely to cause harm to pupils. A further allegation was that the district and the board were negligent in failing to provide adequate supervision for pupils.

The school district and the school board pleaded the defense of governmental immunity. Plaintiffs responded that this defense did not preclude the district and the board from liability for their own tortious acts and the tortious conduct of their employees acting within the course and scope of their employment.

The trial court granted summary judgment to the district and the board on authority of the 1962 decision Sayers v. School District No. 1, (114 N.W. (2d) 191) which while abrogating governmental immunity as against municipalities, held that school districts continue to have governmental immunity in the exercise of a governmental function.

On appeal, the decision was affirmed.

Williams v. Primary School District No. 3, Green Township
142 N.W. (2d) 894
Court of Appeals of Michigan, June 14, 1966.

The question in this case was whether a primary school district was immune from suit for the wrongful death of a six-year-old child who was fatally injured during a school recess while she was playing on playground equipment alleged to be dangerous and of special peril to young children.

The parents brought an action for the death of their daughter. The school district moved for summary judgment on the ground that it was a state agency and thereby immune from ordinary tort liability. It argued that conducting recreational activities on its school playground was a government function, the exercise of which did not create liability.

The court decided in favor of the school district. The last of a series of Michigan Supreme Court decisions on the subject, it noted, clearly held that the state and its agencies were endowed with absolute sovereign immunity from tort liability except to the extent that such immunity has been abrogated legislatively. The court also cited authority that a school district is an agency of the state and, as such, is clothed with sovereign immunity.

The parents claimed that the case involved the doctrine of attractive nuisance and could be decided on that basis, since in attractive nuisance cases government immunity is no defense. But this claim was held inapplicable to the facts of the case because trespass by the user, a basic requirement of the doctrine, was absent since the child was killed during recess when she was rightfully on the playground.

Minnesota

Petron v. Waldo
139 N.W. (2d) 484
Supreme Court of Minnesota, December 31, 1965.

On his run at the start of school following a two-week spring vacation, the school bus driver in violation of a statute ignored a "closed road" barricade, on a road under construction. He drove his bus filled with pupils around the barricade and onto a new grade at a speed of about 30 miles per hour. Upon a pupil's warning of an approaching rough spot 500 feet ahead, the driver reduced his speed to 12 to 15 miles per hour and shifted into low gear. While traveling in this manner, the bus hit a pair of hard-packed ridges that cut directly across the new grade. These ridges were not visible from the bus. The bus bounced, and a pupil who was thrown from her seat was injured. She brought an action for negligence against the driver.

At the close of the evidence at tht trial, the pupil's attorney moved for a direct verdict in her favor on the question of liability on the ground that the evidence established the driver's negligence as a matter of law. The trial court denied this motion and submitted the case to the jury which returned a verdict for the bus driver. Request for a new trial was denied. The decision was upheld on appeal.

The court held that under the facts and circumstances of the case, the trial court did not err when it denied the request of the pupil for an instruction to the jury that driving around the barricade was unlawful and negligent as a matter of law, but instead instructed the jury that the driver was required to proceed with caution and exercise a constant lookout for the dangers ahead. Further, the denial of the motion of a directed verdict for the pupil and submission of the issue of negligence to the jury was proper. Although the evidence in this case was largely undisputed, the court said that the question of whether the driver exercised reasonable care under all of the circumstances was one on which different minds could reasonably reach different conclusions and, therefore, it was a question for the jury to decide. The court also sustained the trial court in refusing to grant the pupil a new trial.

Missouri

Smith v. Consolidated School District No. 2
408 S.W. (2d) 50
Supreme Court of Missouri, En Banc,
November 14, 1966.

A high-school pupil sued his school district, superintendent, and instructor for personal injuries which he sustained while practicing holds and falls in a wrestling class. The pupil charged defendants jointly and severally with negligence in failing to properly supervise or designate rules and regulations for wrestling activities, to ascertain whether the pupil and his wrestling partner understood their instructions and chances of injury, to exercise care, or to employ a competent instructor.

Defendants claimed that the rule of sovereign immunity protected the school district from liability, that the individual defendants were performing governmental actions and that they were charged with a nonfeasance for which they were not liable, since the tort, if any, was not intentional. A motion to dismiss the complaint was granted and upheld on appeal.

The pupil theorized that the physical education instructor was an employee of the school superintendent and that the superintendent would be liable for the instructor's acts on a master-servant basis. The court rejected this theory as fallacious, saying,

> It is a matter of public knowledge, and we may say of judicial notice, that all teachers in the public schools are employees of the school district and are employed by it on contracts. The superintendent may presumably recommend, but he does not employ. He is neither the master nor the employer of any teacher. These conclusions also refute the allegations to the effect that [the superintendent] failed to employ a suitable and competent instructor for wrestling.

The pupil further asked the court to review the doctrine of sovereign immunity and to abolish it by judicial decree. The court noted that, for more than a century, Missouri courts have uniformly held that a state political subdivision is not subject to liability for negligence. Under this rule school districts have long been held immune from tort liability. Therefore, the court regarded this rule to be fixed public policy and any abandonment should come through the legislative process. "It is not the function of the judiciary to create confusion and instability in well settled law, nor is it within the province of judges to refuse to apply firmly established principles of law simply because these rules do not conform to the individual judge's philosophical notion as to what the law should be."

The court then reached the question of the superintendent's liability. No facts were alleged directly connecting him with a duty to instruct anyone in the wrestling course, to check on pupils' individual knowledge, or to personally supervise their activities. The court, therefore, held that no cause of action was stated against the superintendent.

Finally, the court considered the liability of the physical education instructor who was charged with failing to instruct the pupil and to designate rules and regulations for wrestling activities and, being present, with neglecting to foresee the accident or forewarn the pupil thereof. The court concluded that the pupil did not allege sufficient facts to state a cause of action for relief against the instructor. In drawing this conclusion, the court recognized that the nature of the sport of wrestling was to overpower one's opponent. The very nature of this innately dangerous activity required that the pupil set forth factual details with enough specificity to show the instructor's duty to stop the match to prevent injury. Thus, the bare allegation that the instructor was negligent in failing to properly teach or designate rules was a conclusion and did not show how his omissions caused the pupil's injury or how his performance of the omitted acts would have prevented the injury.

Nevada

Walsh v. Clark County School District
419 P. (2d) 774
Supreme Court of Nevada, November 4, 1966.

On March 7, 1965, a seven-year-old boy fell from the roof of a school and died soon thereafter of injuries sustained in the fall. A legislative enactment waived sovereign immunity in negligence suits against state political subdivisions, effective July 1, 1965. The statute was not retroactive. The parents of the child brought an action against the school district. The issue was whether the school district enjoyed governmental immunity when the cause of action arose. The court held that the district did not enjoy governmental immunity.

After July 1, 1965, the law was clear that sovereign immunity was abrogated. Prior thereto, the status of sovereign immunity was confused. Relevant legislative language on the subject said, "Each school district shall have power to sue and may be sued, but this legislative declaration in no way constitutes a waiver of tort liability." In the court's opinion, this language did not create immunity, but assumed the existence of an immunity. Adopting the view of another decision which declared governmental immunity nonexistent, the court deemed the statutory expression about immunity to be meaningless and ineffective. Hence, the balance of the section, "Each school district shall have power to sue and may be sued," was unimpaired and the parents of the deceased child were not affected by the doctrine of sovereign immunity.

New York

Cadieux v. Board of Education of the City School District for the City of Schenectady

266 N.Y.S. (2d) 895
Supreme Court of New York, Appellate Division, Third Department, February 8, 1966.

A seventeen-year-old high-school pupil was injured at a football game. She was standing by the sidelines when players violently left the marked field during the course of play. At the time of the incident, the pupil was aware that players might run off the playing area to where she stood and that safe seats were available in adjacent bleachers.

The pupil brought an action for damages. A motion for summary judgment by the school board was granted. The decision was upheld on appeal on the rule that a spectator at a sporting event assumes risks incident to the game, especially where the spectator chooses to stay at an unsafe place despite the availability of protected seating. This rationale, the court said, applies equally to a football game, and is not affected by the pupil's age.

Kern v. Central Free School #4, Town of Brookhaven

270 N.Y.S. (2d) 137
Supreme Court of New York, Appellate Division, Second Department, May 16, 1966.

(See Pupil's Day in Court: Review of 1964, p. 77.)

Leave was requested of the court by a mother in her own behalf, as well as on behalf of her 15-year-old daughter who suffered a school accident, to file a claim for damages against the school district after the statutory 90-day period for filing had expired. The court granted permission to both claimants to serve the late notice of claim.

On motion by the school district for reconsideration, the court vacated its decision, but granted the infant claimant leave to make a new application. This order was appealed.

Under the statute, a court may excuse the failure to serve a notice of claim within the prescribed time limit where there is justifiable reliance by a claimant or written settlement negotiations. However, since the plaintiffs' attorney corresponded shortly after the accident in a way to indicate that even he was not relying on settlement negotiations as a basis for not serving a timely notice of claim, the appellate court held that the parent had no statutory basis upon which to serve a late notice of claim. But as to the daughter, infancy was separate statutory basis for late filing. Since under the rule that an attorney's error causing a late or erroneous service will not preclude an infant's reliance on the statute, and since the original application was made within the one-year period prescribed by the statute, the appellate court ruled that original decision granting the infant claimant leave to file a late notice was to be adhered to.

Klee v. Board of Cooperative Educational Services

270 N.Y.S. (2d) 230
Supreme Court of New York, Appellate Division, Fourth Department, March 31, 1966.

Court permission to file a late notice of claim against the school district was sought. The claimant was 18 years old at the time of the accident, but severely mentally retarded with an apparent mental age of about five years or less. The lower court denied the request. On appeal, the order was reversed.

Since the record disclosed a cognizable relation between the fact of infancy and the failure to file the claim within the statutory time limitation, the court granted permission to serve the late notice of claim.

Lawes v. Board of Education of City of New York
213 N.E. (2d) 667
Court of Appeals of New York, December 30, 1965.

A pupil suffered a severe eye injury when she was struck by a snowball thrown by another pupil. The snowball was thrown on school property while the pupil was returning to school from lunch recess. The incident did not take place during a recreation period. The school had a rule against snowball throwing, and the teacher of the injured girl had warned her pupils not to throw snowballs. A judgment for $45,000 was rendered against the school board in the trial court and was affirmed by a divided court in the Appellate Division (257 N.Y.S. (2d) 914, March 15, 1965).

On further appeal, the judgment was reversed and the complaint dismissed. The court held that the school board was not liable to the pupil for the injury sustained since the facts in the case did not spell out any notice of special danger, and there was no proof that the teacher had notice of any other snowball throwing on the day the injury occurred.

The court said that no one grows up in this climate without throwing snowballs and being hit by them. When there is snow on the ground as children come to school, it would require intensive policing, almost child by child, to take all snowball throwing out of play. In the opinion of the court it is unreasonable to demand or expect such perfection in supervision from ordinary teachers or ordinary school management and a fair test of reasonable care does not demand it. A reasonable measure of the school board's responsibility for snowball throwing, the court stated, is to control or prevent it during recreation periods according to its best judgment of conditions, or to take steps to intervene at other times if dangerous play comes to its notice while children are within its area of responsibility. In the circumstances of the case, to impose a liability is an undue burden on the school because teachers did not stand outside for active intervention.

Melisi v. Central School District No. of the Towns of Schoharie et al., County of Schoharie, and the Town of Knox, County of Albany, et al.
266 N.Y.S. (2d) 933
Supreme Court of New York, Appellate Division, Third Department, February 8, 1966.

Actions to recover damages for alleged negligence were brought against the school district and its school bus driver by a parent in her own behalf and for her injured child. The defendants moved to dismiss the complaints because of a defect in the service of the notice of claim.

Plaintiffs' attorney had mailed letters by ordinary mail within the 90-day statutory period to the school district and the bus driver notifying them that he was representing plaintiffs in connection with the injuries the pupil sustained in the operation of the school bus. The letters were actually received by the school clerk, a person upon whom service is authorized by statute either personally or by registered mail.

The lower court denied defendants' motion to dismiss the complaints and granted the plaintiffs' cross motion permitting them to serve amended notices and amended complaints. On appeal the decision was affirmed.

The appellate court ruled that the requirement for service of notice of claim by registered mail was fully and effectively waived since the notice was not rejected and no objection was made to the manner of its service. In addition, the notice of claim was validated by reason of the fact that after it was actually received by the clerk of the school district, its insurance carrier, some eight months later, caused the pupil to undergo a physical examination by physicians the insurer had designated. In view of these reasons, and since the school district was immediately informed of the accident and was in no wise prejudiced by the manner of service, the lower court properly granted the application of the plaintiffs to correct the defect in the mailing of the notice of claim.

Ohio

Corbean v. Xenia City Board of Education
366 F. (2d) 480
United States Court of Appeals, Sixth Circuit, September 13, 1966. Certiorari denied, 87 S. Ct. ___, January 23, 1967, (35 Law Week 3252).

A public-school pupil who was injured through the negligence of school employees, sued the board of education for damages in a state court. The suit was dismissed on grounds of sovereign immunity because the operation of the school was a governmental function. The pupil appealed on the ground that enforcing the governmental immunity doctrine deprived him of his rights under the Fourteenth Amendment to the federal Constitution, but the dismissal was affirmed.

The pupil then began another suit in federal court asserting federal jurisdiction by labeling the action as one to redress deprivations of his civil rights. This suit also was dismissed. This decision was affirmed on appeal on grounds that the state had not violated any of the pupil's constitutional rights by applying the doctrine of governmental immunity. It was the law of Ohio that a school board, when discharging a governmental function, was protected from tort liability by the doctrine of sovereign immunity. And federal jurisdiction was not valid on civil rights grounds either, since, on the facts, no such rights were infringed.

The Supreme Court of the United States denied a petition for a writ of certiorari for a review of this decision.

Pennsylvania

Dillion v. York City School District
220 A. (2d) 896
Supreme Court of Pennsylvania, June 24, 1966.

The school district and four employees were sued to recover damages a high-school pupil suffered when she slipped on ice-covered concrete steps while going to her next class from one building to another. The complaint charged that the school district knew or should have known of this dangerous condition, and therefore was liable under the doctrine of respondeat superior for failing to maintain the steps in a safe condition, and failing to warn the pupil of the existing hazard. The school district asserted the defense of governmental immunity from liablity for torts committed by its employees acting within the scope of its legitimate governmental functions. The lower court sustained the school district and the pupil appealed.

In accord with its previous decisions, the Pennsylvania Supreme Court upheld the school district immunity to tort liability, saying once more that it was reluctant to abolish the doctrine by judicial fiat, and that the change should be made by the legislature. The opinion states:

> Even though the reasons for originating governmental immunity are now anachronistic, the Commonwealth may wish to sustain the rule for other, more modern reasons. Only the legislature can deal with the field of immunity in all of its state, municipal corporations and school district aspects by enacting a comprehensive bill based on extensive hearings and investigation.

The court rejected the pupil's contention that the school district waived its immunity to tort liability by the purchase of liability insurance coverage for itself but not for its employees. This insurance policy, the court said, protects the school district for possible liability incurred while engaging in proprietary functions.

Esposito v. Emery
249 F. Supp. 308
United States District Court, Eastern District of Pennsylvania, April 21, 1965.

A seven-year-old pupil suffered a permanent ear injury when a bank of lockers fell on him as he was attempting to open one of the lockers. The door of the locker was binding, probably because of paint which had recently been applied. The child's father sought to recover damages. He acknowledged that the school district was protected from liability by governmental immunity. But he charged that the principal, assistant principal, director of administrative services, and janitor were liable for their own personal, injury-causing tortious acts committed within the scope of their authority. These individuals, who were named as defendants, moved for summary judgment on the ground of sovereign immunity. The question thus became whether sovereign immunity extended to them.

The court held that servants and agents of the school board were liable for their own personal torts, but they were not vicariously liable for the negligence of any other servant or agent. While governmental immunity was granted to the individual school-board directors, since they formed a corporate body, the board's servants and agents were not clothed with the same corporate character. Defendants' motion for summary judgment was therefore denied.

Moss v. School District of Norristown
250 F. Supp. 917
United States District Court, Eastern District of Pennsylvania, February 3, 1966.

A pupil sued three school districts and the operator of a school bus service for personal injuries as a result of an assault and battery on her as she disembarked from the school bus. The school districts interposed the defense of governmental immunity. The pupil countered that the school district was not performing a government function, that she had a right of action based on breach of contract, that the conduct complained of constituted a nuisance, and that the members of the school board failed to carry out their statutory duties. The court rejected all these arguments.

It ruled that the school districts were acting under legislative mandate and performing a government function for which they were entitled to immunity from tort liability in view of a statute requiring the board of school directors to provide transportation to certain children.

Nor did the pupil have an action for breach of contract on the basis that she was a third party beneficiary in the bus contract between the school district and the bus operator in the absence of a provision in that contract conferring third party benefit rights on pupils.

To surmount the governmental immunity obstacle and support the contention that the conduct of the bus operator constituted a nuisance, the pupil asserted that the bus operator had not maintained proper discipline over a long period of time, a condition known to the school district, the children were not assigned to regular seats, left the bus at unauthorized stops, and the children and drivers smoked on the bus. The court held that these facts did not amount to a nuisance but were items of negligence.

In rejecting the pupil's contention that school authorities had failed to perform their duties under the busing statute, the court said the pupil failed to advance any authority for this proposition. To adopt the argument, the court added, would be to demolish the doctrine of governmental immunity "however desirable that may be...[but] until the doctrine meets its legislative demise, it is the duty of the court to apply it when and where applicable."

Washington

Tardiff v. Shoreline School District
411 P. (2d) 889
Supreme Court of Washington, Department 1, March 3, 1966.

A seven-year-old pupil was injured when he fell from a rope cargo net hung in the school gymnasium. The cargo net had been used since 1961 as part of the physical education training program in the same way as a climbing rope or horizontal ladder. The complaint brought against the school district for damages alleged the school district was negligent in failing to provide reasonable protection for the pupil, in failing to properly supervise the activities conducted by the school, and in advancing and putting into effect a plan, the reasonable and foreseeable consequence of which was to cause injury to him.

The trial court granted summary judgment to the school district on the ground that it was immune because the cargo net was an athletic equipment and, therefore, came within the statutory exception that no action could be maintained against a school district relating to any athletic equipment or apparatus.

On appeal, plaintiff argued that the school district immunity based on this exception was repealed by implication by a 1963 amendment to another statute under which the state and its agencies and departments were made liable for damages arising out of tortious conduct. The court rejected this agrument, saying that even if it were conceded that the school district was an agency of the state, there was nothing in the 1963 legislation whereby it could be reasonably concluded that the legislature intended to repeal by implication the separate statute under which school districts could be sued for negligence, but gave them immunity with respect to athletic equipment or apparatus. Also rejected by the court as being without basis was the contention that the rope cargo net was not an athletic apparatus.

The court ruled, however, that a school district is not immune from suit whenever an athletic apparatus is involved. A school district trict has a duty to anticipate reasonable foreseeable dangers and to take precautions to protect the children in its custody from such dangers. In order for the exception to be applicable, the court said, the negligence must be in relation to the rope cargo net. Where, as asserted in this complaint, the alleged acts of negligence pertain to supervision of an activity required of the pupil, the pupil may sue the school district, and the school district may be liable for injuries suffered as a result of negligent supervision or failure to supervise the activity.

Since the pupil's complaint alleged negligence on the part of the school district in failing to provide reasonable protection and in failing to properly supervise the gymnasium activity, the court held that there was a genuine issue of material facts to be tried, and summary judgment should not have been granted. The decision was reversed and the case remanded for further proceedings.

Wisconsin

Helmin v. Student Transportation Co. Inc.
139 N.W. (2d) 103
Supreme Court of Wisconsin, January 4, 1966.

A handicapped pupil was injured when his wheel chair rolled down a ramp of the school building and collided with the special bus that was to take him aboard. An action for personal injuries grounded on negligence named as defendants the bus company and its insurance carrier. The defendants in turn impleaded the school board of the city of Milwaukee as a defendant, seeking indemnification or contribution. The school board claimed it was improperly impleaded and asked that the third-party complaint against it be dismissed. The trial court concluded that the city and not the school board should have been impleaded, and granted the school board's request.

The single issue on appeal was whether the school board of Milwaukee, a first-class city, can be a party defendant in a personal injury action based on negligence. Two statutory sections were involved. One reads that in any action in which the school board is a defendant, service of a summons or other papers in starting the action must be made as provided therein. The other section provides that no action shall be maintained against any first-class city upon any claim arising out of the operation, conduct, and maintenance of the schools until the claim has been presented to the school board and disallowed in whole or in part. The defendants contended that since the first section contemplates actions against the school board, and since the second section does not specifically require suits on claims against the board to be brought against the city only, the school board is a proper defendant in this case.

The court held that in cases involving monetary claims, the school board of a first-class city is not a proper party defendant. It concluded that the legislature specifically intended that actions on claims for money damages arising out of the operation, conduct, and maintenance of schools in cities of the first class must be brought against the city.

RELIGION; SECTARIAN EDUCATION

Arkansas

Mannis v. State of Arkansas ex rel. DeWitt School District No. 1
398 S.W. (2d) 206
Supreme Court of Arkansas, January 10, 1966; rehearing denied, February 14, 1966.
Certiorari denied, 86 S. Ct. 1864, June 6, 1966.

(See page 9.)

Delaware

Opinion of the Justices
216 A. (2d) 668
Supreme Court of Delaware, January 28, 1966.

(See page 50. Issue is bus transportation for parochial-school pupils.)

Illinois

DeSpain v. DeKalb County Community School District 428
255 F. Supp. 655
United States District Court, Northern District of Illinois, E.D., June 27, 1966.

Parents of a school child sued school officials to enjoin a class recital of the following verse in their child's kindergarten class:

> We thank you for the flowers so sweet;
> We thank you for the food we eat;
> We thank you for the birds that sing;
> We thank you for everything.

Immediately prior to recitation, the teacher allegedly required her pupils to fold their hands on their laps, close their eyes, and assume a prayerful attitude. The parents insisted that this constituted a prayer, and its recitation was, therefore, a violation of the federal Constitution.

The school authorities contended that the daily recitation of the verse taught children good manners and gratitude. Having the children fold their hands in their laps was to teach politeness, the school officials explained. Testimony conflicted as to the prayerful position of the children during the recitation of the verse, but there was evidence that this activity helped prepare the children for life outside their families.

The court decided that in this setting the verse was not a prayer within the meaning of the Constitution. The prime objective of the verse was to make the children aware of and grateful for the beauties of the world around them and to inculcate good manners. Absence of religious manifestations like bowing the head, crossing themselves, or saying "amen," and widespread use of the verse in kindergarten curricula elsewhere indicated a secular rather than religious use. In addition, no satisfactory evidence was produced to show that the verse could reasonably offend the parents' religious belief which did not subscribe to a form of supplication to a divine being. The need to afford substantial latitude to a teacher in her choice of instruction should not be proscribed too quickly by the courts.

The court observed that the First and Fourteenth Amendments to the Constitution contemplated proscription of law respecting an establishment of religion. No governmental law or regulation authorized the verse in question, the court noted. It was simply an individual teacher's choice of verse. Its use thus had none of the rigidity of a statute or rule, and, therefore, no hazard of assured continuance.

By their facts, leading court decisions on prayer in public schools were found by this court to involve much more extreme challenges to the Constitution. In its view, the present case raised merely a minimal question--"a mere shadow rather than a real threat"--and offered no basis for the court to become an arbiter of kindergarten curriculum.

The complaint was dismissed for failure to state a cause of action.

Morton v. Board of Education of the City of Chicago
216 N.E. (2d) 305
Appellate Court of Illinois, First District, Second Division, February 18, 1966.

By resolution of the board of education, students residing within the attendance area of a certain public high school were permitted to attend that high school on a part-time basis during an experimental school year. The rest of their school day was to be spent in private or parochial schools. Participating students enrolled at the public high school took there all their courses, except English, social studies, music, and art, which courses were taken at a nearby parochial school.

Plaintiffs sought to enjoin the board from maintaining the dual enrollment program on grounds that it violated statutory and constitutional provisions, namely, that the program permitted students to violate the state compulsory attendance laws, and that the program violated the state and federal constitutions regarding the establishment and maintenance of religion. State law required compulsory education for all children between the ages of 7 and 16.

The court upheld the dual enrollment program, saying,

> Since the object of the compulsory attendance law is that all children be educated and not that they be educated in any particular manner or place, part-time enrollment in a public school and part-time enrollment in a non-public school is permitted by [state statute] so long as the child receives a complete education....Furthermore, the dual enrollment program in question does not require all students enrolled in the participating non-public school to be enrolled in the dual enrollment program, nor does it contemplate that the only courses taught in the participating non-public schools are to be solely those taken by the participating students.

Plaintiffs had shown that the legislative history of the statute providing for compulsory education originally required students to attend "some public or private school." But subsequently the words "or private school" were omitted. Plaintiffs argued that this indicated a tightening of the public-school requirement. The court disagreed and determined that the statutory language was revised only to delete superfluous verbiage. It was difficult for the court to understand how the omission of those words had any bearing on the question of part-time enrollment so long as the child received a full and complete education. A further manifestation of the legislature's intent to allow for dual enrollment, the court said, was statutory provision for state aid to part-time students from common public funds.

The court stated that the school board had statutory and constitutional power to operate experimental and educational programs, provided their operation was consistent with school code provisions. Since the dual enrollment program was voluntary and available to all religious groups, the court upheld its legality as a rightful attempt to find a better method of educating school children at their parents' option. The complaint was therefore dismissed.

Kansas

State v. Garber
419 P. (2d) 896
Supreme Court of Kansas, November 5, 1966.

(See page 11.)

Maryland

The Horace Mann League of the United States of America, Inc., v. Board of Public Works of Maryland
220 A. (2d) 51
Court of Appeals of Maryland, June 2, 1966.
Certiorari denied, 87 S. Ct. 317, November 14, 1966.

The Maryland legislature passed four separate statutes providing outright matching public grants totalling $2,500,000 for the construction of buildings to four private church-related colleges. A suit filed by individual taxpayers and by the Horace Mann League, a nonprofit educational corporation, against these colleges and against public officials, challenged the validity of the statutes under the state and federal constitutions.

The lower court dismissed the suit, and this appeal followed. The ruling that the Horace Mann League had no standing to sue was affirmed. The right of the individual taxpayers to bring the suit was also upheld.

The main issue on appeal was whether the statutes providing the outright grants to the church-related colleges violated state and federal constitutional provisions. Plaintiffs conceded that some degree of relationship to church or religion may exist in an educational institution without rendering it "sectarian," but contended that when such a relationship is "substantial," this renders the institution sectarian, and the grants of public funds to it unconstitutional. On the other hand, the colleges argued that there is no constitutional proscription against a state granting public funds to a sectarian college, nor does either the state or federal constitution forbid grants for educational purposes to colleges which bear a substantial relation to a church.

Before judging whether the challenged statutes violated the establishment clause of the First Amendment to the federal Constitution, the court, on the basis of decisions of the Supreme Court of the United States, set out the following standards and principles to be applied in measuring the validity of the statutes under the First Amendment:

> To make out a First Amendment violation, it must be demonstrated for each statute that its purpose, as evidenced either on its face,

> or in conjunction with its legislative history, or in its operative effect, is to use the state's coercive power to aid religion.
>
> If the primary purpose, as distinguished from an incidental one, of the state action is to promote religion, the First Amendment is violated. But if the operative effect of a statute furthers both secular and religious ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion.
>
> No tax in any amount can be levied to support any religious institutions whatever they may be called or whatever form they may adopt to teach or practice religion.
>
> Although a state cannot contribute tax-raised funds to the support of an institution which teaches tenets and faith of any church, it cannot exclude individuals, because of their faith or lack of it, from receiving the benefits of valid welfare legislation.
>
> Not every religious observance by an institution sectarianizes it. The question of sectarianization depends upon the consideration of the observances themselves, and the mode, zeal, and frequency with which they are made.

The court stressed that each case must be decided on its own particular facts. It must be determined whether the educational institution receiving the public grant is religious or sectarian, and in making this determination, these factors are significant: the stated purpose of the college; the college personnel, including the governing board, the administrative officers, faculty, and the student body, with stress on the substantiality of religious control over the governing board; the college's relationship with religious organizations and groups, including the extent of ownership, financial assistance, affiliations, religious purposes, and miscellaneous aspects of the college's relationship with its sponsoring church; the place of religion in the college program, including the character and extent, and the required participation by any and all students; the result or outcome of the college program such as accreditation, and the nature and character of activities of the alumni; and the work and image of the college in the community.

On the basis of these standards and criteria, the court considered each of the four colleges individually. In a 4 to 3 decision, the court ruled that the church-related Hood College was not sectarian in the legal sense, and that the statute providing a public grant of $500,000 to help this college construct a classroom building and a dormitory did not violate the establishment clause of the First Amendment. It ruled that each of the other three colleges, Western Maryland, St. Joseph, and Notre Dame was sectarian, and the statutes granting public funds to them for the construction of science buildings and a dining hall were unconstitutional.

As to Hood College, a liberal arts college for women, the court found that although it was affiliated with the United Church of Christ, the church does not control its governing board, its financial assistance to the total school operating budget is moderate, there is no sectarian requirements for members of the faculty, administrative personnel, or the student body; the enrollment is open to students of all faiths and the students are selected primarily on the basis of their educational records; that in none of the courses taught, including those in the department of religion and philosophy, is there any attempt to proselytize; that religion does not occupy a dominant place in the college program, and the students are not required to attend and participate in many religious observances. The stated purposes of the college in relation to religion, the court said, "are not of a fervent, intense, or passionate nature, but seem to be based largely on historical background." Neither the United Church of Christ nor any other religion is running the college or has control of it. Under these circumstances, the court held that the primary purpose of the statutory grant to Hood College was not to aid or support religion, but to promote educational facilities for the students. Therefore, the statute did not violate the First Amendment.

The statutory grant of $500,000 to Western Maryland College to aid in the construction of a science wing and dining hall was held to violate the First Amendment. The court concluded that the college was sectarian in a legal sense in view of these circumstances: This college, affiliated with the Methodist Church, characterized itself as a religious oriented institution. More than one-third of its governing board are required to be Methodist ministers. All the presidents have been Methodist ministers. Care is taken to obtain a faculty committed to a Christian philosophy. Almost half of the faculty and 40 percent of the student body are Methodist, a significant number of students are Methodist pre-ministerial students, some under scholarship, and children of Methodist ministers are charged only half-tuition. Many of the students become seriously interested in religion for the first time while attending the college. Participation in Protestant religious services is required of all students. The college campus is made available at cost to Methodist organizations. Preference is given to Methodists in "borderline" cases in student-body selection, and the basic purpose of the college is to provide the best in higher education "within the framework and atmosphere of the verities and values of our Christian faith."

The court also ruled unconstitutional under the First Amendment the statutes providing grants of $750,000 each to the two Catholic colleges, Notre Dame and St. Joseph, intended for the construction of science buildings because of these facts: The stated purposes of both colleges are deeply religious, and the governing boards and the administrations are controlled by Catholic religious orders which own the colleges and finance them heavily. The faculties are predominantly members of religious orders. The students are almost entirely Catholic and include candidates for religious orders. Catholicity permeates the colleges' programs and physical surroundings. There are a variety of college-sponsored, exclusively Catholic observances, many of them compulsory for the students. Supplementary programs are strongly Catholic as are the images of the colleges in their communities. Supplementary uses of the campuses have been exclusively by Catholic religious groups. These facts, the court said, speak for themselves and clearly show that the operative effects of the statutes, if the grants are permitted, demonstrate in a legal and constitutional sense a purpose to use the state's coercive power to aid religion. The grants, if made, would constitute a contribution by the state of tax-raised funds to help support institutions which teach a particular faith, and the taxes to raise these funds would be levied to help support religious activities and religious institutions.

The court also disposed of the claims of unconstitutionality under the Maryland constitution. It held that the statutes did not violate the constitutional provision that no man should be deprived of his life, liberty, or property except by judgment of his peers or the law of the land; nor did the statutes violate the constitutional provision which prohibits imposing taxes for other than public purposes, or the constitutional provision prohibiting any person from being compelled to frequent, maintain, or contribute to any place of worship or any ministry.

Both sides filed petitions seeking an appeal before the Supreme Court of the United States. These petitions were denied.

Missouri

Special District for Education and Training of Handicapped Children of St. Louis County v. Wheeler
408 S.W. (2d) 60
Supreme Court of Missouri, En Banc, September 12, 1966.

During the 1963-64 school year, the special district provided speech therapy to parochial-school children by sending its speech teachers into the parochial schools. In February 1964, the district sued for a declaratory judgment that its 1963-64 practice was valid after the state board of education refused to reimburse the district for its expenses in providing such therapy. The following school year, 1964-65, the district changed its program and provided speech therapy for parochial-school children in buildings maintained by the district. Parochial-school children desiring to receive such therapy were released from their parochial schools for part of the regular six-hour school day. The lower court held invalid the practices followed in both school years. This decision was affirmed on appeal.

The state constitution provided that state funds were to be appropriated to free public schools and "for no other uses or purposes whatsoever." Other constitutional provisions and statutes were to the same effect. The court held that the use of public school moneys to send the speech teachers into parochial schools for speech therapy was not within the purpose of maintaining free public schools. And the use of public funds generally for the education of pupils in parochial schools was not for this purpose either. The 1963-64 practice was therefore unlawful and invalid.

The court held further that the 1964-65 practice of providing speech therapy during regular school hours for parochial-school children in buildings maintained by the special district contravened the state compulsory attendance law. Under this law, parents are compelled to cause their school-age children to regularly attend a school for a six-hour day. Removing parochial-school children from their school for part of this six-hour day to attend speech classes in public schools violated this law.

It was argued that parochial-school pupils, as such, were deprived of liberty without due process of law. The court rejected this argument since there was nothing to indicate that the trial court invoked the compulsory attendance law because the pupils in question went to parochial school. The result would have been the same no matter what nonpublic school they attended.

New Jersey

Holden v. Board of Education of the City of Elizabeth
216 A. (2d) 387
Supreme Court of New Jersey, January 24, 1966.

A New Jersey statute requires public-school pupils to salute and pledge allegiance to the flag each day, but exempts from this requirement those children "who have conscientious scruples against such pledge or salute." The statute provides that such children show respect for the flag by standing at attention while the pledge is given.

Several Negro children, members of the sect of Black Muslims, were suspended from school by their principal for refusing to pledge allegiance to the flag, although they did stand at attention. The local school board upheld the suspension, and the parents appealed to the state commissioner of education. At the hearing before the commissioner, the parents testified that they had instructed their children to refuse to take the pledge because their religious teachings prohibit a pledge of allegiance to any flag. They contended that this refusal came within the statutory exemption. The school board argued that the exemption for conscientious scruples was never intended to be so broadly construed as to include the beliefs of these parents, and sought to establish that their beliefs were as much politically as religiously motivated and were closely intertwined with their racial aspirations.

The commissioner found it unnecessary to determine whether the teachings of the Black Muslims were religious, or political, or both. He concluded that the statutory language of "conscientious" rather than "religious" scruples in the exemption from the required salute and pledge brought the statute within the court decisions on flag salute which interpret the freedom guaranteed by the First Amendment to extend beyond a particular set of religious beliefs to the much broader sphere of intellect and spirit.

The commissioner determined that the children had complied with the provisions of the statute in claiming exemption from pledging allegiance to the flag on grounds of conscientious scruples and in being willing to stand respectfully at attention during the ceremony, and that the children had been improperly excluded from school. He directed that the children be reinstated.

The school board appealed this decision to the state board of education which upheld the commissioner. Upon further appeal to the court, the decision was affirmed on the same basis as the commissioner's reasoning.

New York

Board of Education of Central School District No. 1, Towns of East Greenbush et al., and Board of Education of Union Free School District No. 3, Towns of North Hempstead and Oyster Bay, Nassau County, v. Allen
273 N.Y.S. (2d) 239
Supreme Court, Special Term, Albany County, August 18, 1966.

A section of the Education Law of the State of New York provided that boards of education shall have the power and the duty to purchase and to freely lend textbooks to pupils in grades 7 through 12 of parochial or private schools complying with the state compulsory education law. Several boards of education brought an action against the state commissioner of education, seeking a judgment declaring the law unconstitutional and void, and to restrain the commissioner from appropriating money for purposes of the section. Parents of parochial-school pupils were permitted to intervene.

At the outset, the court held that the boards of education had standing to sue, since they felt compelled to perform an unlawful act and were entitled to a remedy. The boards had a right to litigate any question affecting the performance of their duties. Otherwise, they would be required to perform and then be met with a taxpayer suit.

On the merits, the court held that the statute providing for the loan of textbooks to nonpublic-school pupils violated the establishment and free exercise clauses of the Constitution of the United States, and the provision of the state constitution prohibiting the use of public money or property directly or indirectly in aid or maintenance of religious schools.

Note: This decision was reversed on appeal. The Appellate Division ruled that the school boards had no standing or status to bring the action. The court did not base its decision on the merits, but said nevertheless, that it was satisfied that the textbook loan statute did not contravene the federal and state constitutions. (New York Supreme Court, Appellate Division, Third Department, December 30, 1966, 35 Law Week 2383.)

Martin v. Brienger
267 N.Y.S. (2d) 15
Supreme Court of New York, Westchester County, January 20, 1966.

(See page 50. Issue is bus transportation to a parochial-school pupil.)

Ohio

Moore v. Board of Education of Southwest Local School District
212 N. E. (2d) 833
Court of Common Pleas of Ohio, Mercer County, October 18, 1965.

A parent of children attending public school in the school district brought an action for a declaratory judgment. He claimed that the school board pupil placement plan in the elementary schools resulted in segregation of pupils based on religious creed in violation of the Fourteenth Amendment, and that the board's method of operating three of its elementary schools constituted operation of parochial schools with public funds in violation of the federal and state constitutions.

The parent sought an injunction to compel the school board to cease segregating pupils in the elementary schools based on their religious creed, to compel the board to conduct the three named elementary schools as public schools and not as religious sectarian schools, and to compel the board to stop using public-school funds to operate religious sectarian schools and to transport children to them.

The court was also asked to enjoin the school board from other sectarian practices such as allowing the public-school teachers to take the pupils to Mass, and to participate in giving religious instruction to the public-school pupils; allowing public-school pupils to receive religious instruction and attend religious services in the same building in which they attend public school and while under the jurisdiction and supervision of the public schools; and allowing teachers to teach while wearing the garb of a religious order.

The facts showed that in three of the four schools in the district all of the pupils were Catholic. The buildings of these three schools were either built by the school district on land leased from the Catholic Church for a nominal fee or were leased buildings owned by the Catholic Church. Twenty of the 25 public-school teachers in these three schools were Catholic, six of them members of religious orders, who wore religious garb while teaching. In these three schools only, classes were released at 11 o'clock daily to allow the children to attend Mass or religious instruction for one hour. The religious instruction was given by some of the same classroom teachers who gave regular classroom instruction. The religious practices were conducted in adjacent church buildings or in classrooms in the buildings used as a public school but not in the buildings or rooms owned or leased by the school board.

There were no geographic boundaries for attendance areas. Dual bus routes were established to transport the children, one for the school attended mostly by non-Catholic children, and the other for the three schools with all Catholic pupils. Tuition fees for some of the nonresident Catholic pupils attending the public schools were paid by their parish.

The court rejected the contentions that the pupil placement plan in effect in the school district violated the Fourteenth Amendment and that the school board introduced sectarian religion in the schools by allowing some of the teachers to wear the garb of their religious order while teaching. Citing the weight of authority, the court held that in the absence of a statute or regulation, as was the case here, religious garb may be worn by teachers while teaching in the public schools.

The court held that the released-time program in operation in the school district violated the establishment clause of the First Amendment and therefore the plaintiff was entitled to injunctive relief. The court found that the school board aided and assisted a religious sect, the Roman Catholic Church, and made it the beneficiary of the board's power in that the board directly provided the pupils for religious instruction through the use of its compulsory education machinery, and indirectly provided the locations suitable for and conducive to, and the personnel needed in the religious instruction given during the released time. The collaboration of the church and the school board, through the ingenious leasing arrangement, the proximity of the classrooms to the place of religious instruction, the recruitment and replacement method used by the school board to obtain Roman Catholic teachers who are capable and willing to give religious instructions, the different school hours in the one school without a released-time program, and other factors led the court to the conclusion that the school board was making use of public-school funds to operate sectarian parochial schools wherein religious instruction is given.

South Dakota

South Dakota High School Interscholastic Activities Association v. St. Mary's Inter-Parochial High School of Salem
141 N.W. (2d) 477
Supreme Court of South Dakota, April 8, 1966.

The South Dakota High School Interscholastic Activities Association, its board of control, and its executive secretary, brought suit to declare a 1964 statute unconstitutional. By counterclaim, the St. Mary's Inter-Parochial High School of Salem and others asked that the court issue an order that the statute be enforced.

The challenged statute made eligible for membership in the association all high schools approved and accredited by the state superintendent of public instruction, and permitted the association to make uniform rules and regulations governing its affairs.

Under the association's 1964 bylaws, membership was restricted to public high schools in the state supported primarily by taxes, and listed in the high-school directory as accredited, and other high schools whose applications for membership were approved by a two-thirds majority of the members voting. For an eligible high school to become a member, the local school board must have approved the application for membership and the bylaws of the association.

The court ruled the statute was constitutional. Noting that the record established that all the accredited public high schools in the state were members of the association, the court said the impact of the statute was upon these public schools, and well within the power of the legislature to regulate and control them.

The court rejected the association's argument that the admission of additional schools would give them an interest in presently held property of the association, thus effecting an unconstitutional taking of its property. The court said that the provision in the statute for the adoption of "uniform rules and regulations governing its affairs" was clearly prospective and provided a method of protecting any existing property rights. The court said further that it would not attempt to suggest or advice as to what rule or regulation may be adopted to accomplish this end, and until such a rule or regulation has been adopted, no justiciable question is presented.

Also rejected was the contention that the statute violated state constitutional provisions against giving or appropriating state money or property to aid or benefit sectarian schools. The court said that the statute did not purport to provide for any gift or appropriation as such, but merely stated that if there was to be an association to control, and in effect, monopolize interscholastic activities, it must admit all accredited high schools under uniform rules and regulations. While the admission of private schools will permit parochial-school students to utilize public-school facilities during athletic contests jointly with public-school students, in the opinion of the court, this could not be said to constitute "aid to a sectarian school."

TRANSPORTATION

California

Manjares v. Newton
49 Cal. Rptr. 805
Supreme Court of California, In Bank, March 18, 1966.

(See Pupil's Day in Court: Review of 1965, p. 70.)

Parents asked the court to issue an order compelling the school board of the Carmel Unified School District to resume transportation for their children to and from school. The two families involved lived in a remote area of the county. At the beginning of the 1963-64 school year, transportation had been authorized by the school superintendent, and had been furnished from the home of one family, located 30 miles from the junior high school and 15 miles from the elementary school. The transportation service, provided by a station wagon belonging to the school district, was discontinued by the school board in November 1963. The parents were then requested to transport the children 6.2 miles to the school bus stop. The board offered to pay the parents mileage to transport the children to that point, but the offer was not accepted, because the parents were unable to arrange for the transportation. One parent volunteered to drive the children if the district would provide him with a suitable vehicle, insurance, and expenses. This offer was rejected. Because of the inability of the parents to provide transportation, the children did not attend school for the remainder of the 1963-64 school year.

The school transportation statute provides that a school district with the written approval of the county school superintendent, may provide transportation to pupils to and from school whenever in the judgment of the board the transportation is advisable and good reasons exist therefor. In their complaint, the parents alleged that the board's action resulted in excluding the children from school and deprived them of their constitutional rights of due process of law and equal protection. The school board denied the allegations and asserted it had no duty to provide the children with free transportation. According to trial testimony for the school board, the reasons for discontinuing the service were based on financial considerations, the possibility the families in other areas not previously serviced would ask for transportation, and the road hazards in the area.

The trial court found that the school board abused its discretion and that its refusal to provide the transportation was arbitrary, discriminatory, and unreasonable in that the board maintained bus service to an area farther from school than here involved; that the road, while narrow and requiring careful driving at certain points, was no more dangerous than other roads over which the board provided transportation; and that the board was financially well able to furnish the service. The school board was ordered to provide transportation to the eight children involved from their homes to their respective schools beginning with the 1964-65 school year.

On appeal by the school board, two issues were presented: Whether the school board's decision was subject to judicial review; and if so, whether the lower court was correct in deciding that the board abused its discretion and acted arbitrarily and capriciously in refusing to furnish the transportation. On the first issue, the board contended that since the transportation statute clearly gave it discretion to determine whether or not transportation should be provided, its determination was conclusive and not subject to review. The court rejected this argument, citing the general rule that while mandamus would not lie to control the discretion of a court or officer, it will lie to force a particular action by an inferior tribunal or officer when the law clearly establishes petitioner's right to such action. Under this rule, the court had jurisdiction to issue an order when an administrative board abused its discretion.

In affirming the judgment ordering the board to resume the transportation, the court held that in the circumstances of the case, neither the cost of providing the service to the eight children, nor the possibility that other families might demand bus service, was a reasonable justification for the board's refusal to provide the service, when as a consequence, the children were denied an opportunity to attend school.

The school board had argued that even if the district is financially able to meet the expense, it is within the board's discretion to refuse the bus service if the cost is unduly expensive when compared to the general transportation costs in the district. Since it was shown without question that the children were being deprived of an education because the board would not authorize bus service, and the district was in a financial position to extend the school bus system to include them, the court held it was arbitrary and unreasonable for the board to refuse to do so simply because it may be more expensive to transport these children than others in the district.

Delaware

Opinion of the Justices
216 A. (2d) 668
Supreme Court of Delaware, January 28, 1966.

The governor of Delaware requested the state supreme court to render an opinion on the constitutionality of a bill enacted by the legislature which provided that whenever a school board provides bus transportation to public-school pupils, it shall also provide for free bus service over the established public-school bus routes to elementary and secondary pupils attending private, nonprofit schools.

The Delaware constitution expressly prohibits the use of any funds appropriated or raised by taxes for educational purposes "in aid of any sectarian, church, or denominational school." The question before the court was whether the free bus transportation to pupils attending sectarian schools would be "in aid of" such schools. The court concluded that the bill providing for free bus transportation to parochial pupils would violate the constitutional proscription because the furnishing of free bus transportation is an aid and benefit to the sectarian schools. In so holding, the court considered but rejected the "child benefit theory" which holds that free public transportation to pupils in sectarian schools promotes safety of the children, and therefore it helps the parents and pupils primarily, and the sectarian schools only incidentally.

New York

Bermingham v. Commissioner of Education
266 N.Y.S. (2d) 700
Supreme Court of New York, Special Term, Albany County, January 28, 1966.

A parent requested the school board to furnish railroad transportation for his son who attended a nonpublic school in a city outside his place of residence. The board denied the request on several grounds among them that the distance between the home and school exceeded 10 miles, the mandatory limit provided for in the transportation law. The state commissioner of education upheld the decision on appeal.

Court proceedings to reverse the decision were brought against the school board and the commissioner. The parent conceded that the distance from the pupil's home to his school was more than 10 miles but argued that the distance of the nearest available route should be measured from the transportation terminal nearest the home to the terminal of that route nearest the school, excluding the walking distance to and from the station at either end.

Since the statutory provision on free transportation refers specifically to children who "live" more than the stated minimum distances from the schools they legally attend, up to a maximum of 10 miles, the court held there was no warrant to exclude any distance for which free transportation is not sought in measuring the nearest available route. The court held further that the decision of the commissioner upholding the school board in denying the transportation to the pupil was not shown to be arbitrary or illegal. Therefore, the commissioner's decision is final and not judicially reviewable.

Martin v. Brienger
267 N.Y.S. (2d) 15
Supreme Court of New York, Westchester County, January 20, 1966.

A parent petitioned the court for an order directing the school district to furnish transportation to her son to a parochial school located outside the district but closer to his home than another parochial school within the school district boundaries. The latter school was not available to the pupil because his grade was overcrowded by children from inside and outside the district. Under the Education Law, a school district is required to transport elementary-school children who live more than two miles from the school they attend, but as to a child attending a parochial school of his denomination, the transportation to be furnished is to be "to or from the nearest available parochial school of such denomination."

The school district, in accord with opinions of the state commissioner of education, argued that a parent requesting transportation for his child outside the district of residence must show that the parochial school inside the district is filled to capacity with district residents; and since the parochial school in the district was overcrowded with pupils who did not exclusively reside in the district, it could not be said the school in his own district was not "available" to this child. The school district also argued that the parochial school outside the district, while closer geographically is not the "nearest available" parochial school to this child, within the meaning of the statute. The parent maintained that this interpretation is strained and violates the express provisions of the statute.

The court agreed with the parent, and held that under the plain meaning of the statute, the parochial school outside the district was the nearest available parochial school to this child, since through no fault of his own he could not attend the overcrowded parochial school in his district. Therefore, the child was entitled to the transportation requested, even though to some extent it may work a financial hardship on the school district.

Tennessee

Davis v. Fentress County Board of Education
402 S.W. (2d) 873
Supreme Court of Tennessee, April 22, 1966.

A group of parents sought a mandatory injunction that the school board transport 19 pupils to Pine Haven school, the school nearest their homes, rather than assign and bus them to another school. They claimed that the board abused its discretion in carrying out the requirements of the state constitution to provide all children within the jurisdiction of the board with an equal opportunity for education in the public schools, and in carrying out the requirements of a statutory provision which provided in part that pupils must "be provided with equal opportunity to attend school with any other pupil transported at public expense, except as conditions of road or remoteness may prevent."

The parents claimed that the school board refused to transport their children to the Pine Haven school, which it could have done without changing existing school bus routes, and that their children were being treated unfairly and unequally. Their action was dismissed in the lower court. On appeal, this judgment was affirmed.

The court held that the action of the board was not arbitrary or unreasonable, nor did it violate the state constitution, since the children of complainants were being provided with transportation to their assigned school. It would, in fact, seem clearly unreasonable, the court said, to force the school board to provide them with transportation to any school of their choice, although the children are not otherwise barred from attending any other school in the county. Even though the bus routes would not have to be changed to transport the children as requested, the possibility of overcrowding certain schools was a danger which the board had discretion to avoid.

MISCELLANEOUS

California

In Re Bacon
49 Cal. Rptr. 322
District Court of Appeal, First District, Division 1, California, February 8, 1966.

Several students at the Berkeley campus of the University of California were found guilty of resisting and delaying arresting police officers, and unlawful assembly and failure to leave a public building after closing time. They were placed on probation and required to spend no more than four weeks at the probation department's training academy. The students had been protesting university rules regulating speech, assembly, and petition on campus. They stationed themselves in the halls of a university building and refused to leave even after the building was closed down for the night, although they were repeatedly warned by the Chief of Berkeley Police and the university chancellor that they would be guilty of unlawful assembly if they did not leave. The students appealed from the probation on several grounds, but the probation orders were affirmed.

In support of their appeal, the students argued that the evidence was insufficient to sustain the finding that they refused to leave a public building after closing time. The court disagreed, noting the fact that a university building is a public building, since it pertains to the community and affects a whole body of people rather than a single individual, just as the University of California was a public corporation whose property belonged to the state. The students continued to deny their offense by asserting that they did not violate the statute in that they had lawful business to pursue in the building. On the assumption that the students did enter for a lawful purpose of expressing grievances with the university rules, their business had ceased when the building became regularly closed, the court said. Moreover, the students' grievances had already been made known to the university at that time. Thus, they were illegally in a public building without lawful purpose.

The students also challenged the sufficiency of the evidence to sustain a finding that they violated the law against unlawful assembly. This law forbade the gathering of two or more people to do an unlawful act. Since the students did assemble to stay in the building after it was closed, an unlawful act, they came within the law's interdiction, held the court.

Finally, the students contended that the Berkeley city officers who arrested the students were not public officers within the meaning of the resisting arrest section, because they were acting beyond the bounds of their municipal jurisdiction. The court took note that the university building where the arrests were made was within the Berkeley city limits. The fact that the university land was not taxed by the city was of no moment. Nor was it relevant that the university had its own police force. Their jurisdiction on campus was not exclusive, but was shared with other law enforcement agencies. Thus, the city police who arrested the students were still clothed with their public office, and the students' resistance to them constituted a crime.

Note: Although this case involved several other issues of law, those issues are not reported here because they turned on technicalities particular to criminal law and are not of special interest to this report.

Robinson v. Sacramento City Unified School District
53 Cal. Rptr. 781
District Court of Appeal, Third District, California, September 29, 1966.

The school district decided that it was inimical to school interests and student discipline and morale for pupils to belong to any fraternity, sorority, or similar nonschool club whose membership was derived from public-school student bodies and was selected by the group members. The board forbade public-school pupils to belong to such groups on pain of suspension from school. Certain nationally recognized public service organizations, such as the Y.M.C.A., Y.W.C.A., Boy Scouts, and Girl Scouts, were excepted.

A pupil who belonged to an interdicted girls' club, sought to have the school-board rule declared unconstitutional. The trial court held that the rule violated the right of free assembly, due process, and equal protection of law. This decision was reversed on appeal. The appellate court concluded that the rule neither exceeded the board's powers nor violated any of pupil's constitutional rights.

While the court recognized that many such student clubs were beneficial, it noted great judicial deploration of "secret societies" which created a membership of the social elite and maintained such class distinctions by a self-perpetuating policy of admitting new members from a limited and select few. These were the harmful practices which the legislature sought to stamp out.

The sorority in question expressed its aims as being to advance literature, charity, and democracy among its members. But the court deemed this a ruse to becloud the class segregation actually practiced by the group. Only 20 girls throughout the school system of Sacramento were interviewed for prospective membership. Candidates' names were proposed by letters of recommendation, and each candidate had to be sponsored by three members, have a "C" average in her grades, and read two books outside the school curriculum. Membership of the sorority's admissions committee was secret. Such features were held sufficient to characterize the sorority as a secret organization.

Regarding constitutional issues, the court said that while the right to free assembly was no shibboleth, this right, like other rights, did not function in a social and political vacuum. Government may step in, provided its regulation was reasonable. State regulation of school activities is constitutional when it bears a reasonable and substantial relation to the object sought to be attained. While high-school fraternities, sororities, and clubs give their members feeling of security and of being wanted, their harm outweighs their good, in the view of many school authorities. The court said it would be remiss to superimpose its judgment over that of the Sacramento board which was better trained in educational matters, closer to the daily affairs of its secondary schools, and obligated to promulgate rules designed to instill discipline and morale. Moreover, students' rights of assembly were not as great as those of adults owing to the students' tender years and need for supervision.

For these reasons, the board rule against high-school fraternities, sororities, and clubs was upheld.

Colorado

Flemming v. Adams
253 F. Supp. 549
United States District Court, District of Colorado, May 2, 1966.

(See Pupil's Day in Court: Review of 1965, p. 73.)

A physically handicapped child had applied for admission to a home tutoring and supplementary reading program. Along with her application she submitted a chiropractor's certificate. According to a Colorado State Board of Education regulation, only certificates by licensed physicians were acceptable and chiropractors were not considered licensed physicians. This regulation, however, was later held void by the state's highest court as exceeding the board's powers. The child sued members of the state board individually and officially for damages, claiming that she had been deprived of her constitutional right to education.

The board moved to dismiss the complaint on the ground that it acted within the scope of its office, and was thus absolutely immune from civil liability. Although the complaint was dismissed, the court rejected this particular contention, saying that in the area of substantial constitutional rights there are limitations on governmental immunity. There is no all-inclusive rule imposing limitations, and each case is to be decided on the basis of its own facts.

On the merits of the case, the court held that the pupil did not state a sufficient cause of action under the Civil Rights Act. The facts were found to reveal no discrimination amounting to a deprivation of the pupil's federally protected rights to due process and equal protection of law. The board's ruling that chiropractors did not qualify as licensed physicians did not violate the pupil's rights merely because such ruling by the board adversely affected her application for special education and was later declared void. Alleging a question to be of constitutional caliber did not make it so, said the court. Since the child had no constitutional right to be examined by a chiropractor, it was her own decision to consult one instead of a licensed physician that caused her deprivation.

The court also found that the pupil's allegations of conspiracy and malice were conclusions offered without any factual evidence. This, too, was held not to afford any basis for inferring discrimination or other equal protection violations.

Sigma Chi Fraternity v. Regents of the University of Colorado
258 F. Supp. 515
United States District Court, District of Colorado, August 31, 1966.

The Board of Regents of the University of Colorado passed a resolution calling for the University to place on probation any fraternity which denied membership to any person because of race, color, or religion. The national Sigma Chi Fraternity forbade its local chapters to recruit Negroes, and its chapter at Stanford University had been suspended from the national organization for accepting a Negro. Because of this, the Colorado Regents required Beta Nu, the University of Colorado chapter of Sigma Chi, to show that it was not discriminating in taking in members. The Board informed Beta Nu of an impending meeting on the matter, and gave the chapter some material relating to the Stanford situation.

At the meeting the board studied correspondence among Sigma Chi locals and national headquarters indicating conflict over the discrimination policy. Officers of the Beta Nu chapter attended this meeting, but did not offer to speak. Thereafter, the board placed Beta Nu on probation, forbidding it to recruit new members. Beta Nu promised to recruit independently of the national fraternity standards, but the ban still was not lifted when the chapter failed to sever its ties with the national's organization or otherwise obtain the national's acquiescence to its autonomy. The national and local fraternities brought an action to enjoin enforcement of the probation. The issues were whether placing the local chapter on probation was constitutional and whether due process rights had been afforded.

The fraternities contended that they were deprived of their freedom of association in not being allowed to recruit freely. The court disagreed, stating that the right to associate freely was not absolute, but subject to the interest which the state sought to advance and in the context of the facts of each case.

The court pointed out that the University of Colorado Board of Regents had broad powers to regulate the affairs of the college, and could validly impose a wide variety of regulations in the interests of higher education. A factor not to be overlooked was that the interest advanced by the Board of Regents in passing the regulation was the elimination of racial discrimination. These factors rendered relative the fraternity's right of free association and also rendered it susceptible to the regulation in question. The court concluded that the purpose of the challenged resolution was valid and within the board's powers and did not violate the constitutional rights of the fraternities.

The fraternities also contended that their procedural due process rights were violated in that they were not given adequate notice or hearing and that the decision imposing probation was not based on sufficient evidence. The test as to whether a party has been afforded due process, said the court, was one of "fundamental fairness" in light of total circumstances. The due process clause does not guarantee any particular mode of procedure, but does require adequate notice of opposing claims and reasonable opportunity to meet them in an orderly hearing.

The court found that in the present situation, notice of time and place of the board's hearing, together with notice of the nature of the issues to be considered, the right to be heard was afforded to the fraternities; and that there was sufficient evidence to support the conclusion of the board that the local chapter's certificate of compliance with the board's earlier resolution did not accurately reflect the true situation within the Sigma Chi fraternity.

Although the court commented that the proceedings had not been conducted in the best manner possible and could have been improved, the court held that there was no violation of procedural due process.

Iowa

Tinker v. Des Moines Independent Community School
258 F. Supp. 971
United States District Court, Southern District of Iowa, Central Division, September 1, 1966.

During the second week of December 1965, school district officials learned that many local students were planning to wear black arm bands to class to mourn those who had died in the Viet Nam war and to support a proposal that the truce proposal for Christmas Day be extended indefinitely. School officials prohibited the wearing of the arm bands. Some students wore them anyway and were sent home from school, although they did return to school after the holidays without the arm bands.

The students who were punished brought an action to recover nominal damages, and obtain an injunction against further enforcement of the rule.

The court held that the prohibition against wearing arm bands did not deprive the students of their constitutional right of free speech. It stated that while an individual's right of free speech is protected against state infringement by the due process clause, the wearing of an arm band to symbolically express views falls within the First Amendment's free speech clause. But the protections of that clause are not absolute. "The abridgment of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgment of speech that actually occurs."

With a wide degree of discretion, school officials are obliged to safeguard the scholarly, disciplined atmosphere of the classroom. Protests over Viet Nam could reasonably disrupt that atmosphere, especially where the issue is generally controversial. Disinterested class debate would be a reasonable and perhaps praiseworthy manner of expressing opinion in school. But wearing arm bands could easily trigger undiscipline.

If students' freedom of speech was limited, it was to an unactionable extent. The students were still free to wear arm bands off the school premises. Therefore, the court denied their request for an injunction and damages.

Massachusetts

Leonard v. School Committee of Attleboro
212 N.E. (2d) 468
Supreme Judicial Court of Massachusetts, Bristol, December 7, 1965.

(See page 11. Case involves school board regulation against extreme haircuts.)

Mississippi

Blackwell v. Issaquena County Board of Education
363 F. (2d) 749
United States Circuit Court of Appeals, Fifth Circuit, July 21, 1966.

The issue presented in this case was whether a school rule forbidding the wearing of Student Non-violent Co-ordinating Committee "freedom buttons" was a reasonable rule necessary for the maintenance of school discipline, or an infringement on students' constitutional rights of free speech.

According to the school authorities a small number of students in all-Negro Henry Weathers High School distributed the buttons among their classmates, forced the buttons on unwilling wearers, threw the buttons through the windows and otherwise caused unruly mass disturbance, class disruption and serious breach of discipline. For causing such disorder, several students were suspended. Parents sought an injunction to compel school officers to readmit the suspended students and allow them to peaceably wear the buttons, but such relief was denied.

Affirming a lower court denial of an injunction without prejudice to right to relief on final hearing, the court noted the school authorities' right to prohibit and punish acts undermining school routine. The court was not unmindful of students' constitutional rights of free speech, but added that the right was not absolute. It must be balanced against the need for school order, correct education being a fundamental state obligation. Since student misconduct was deleterious to the school's function and inexorably connected with the passing out of the buttons, the court concluded that the rule of the school board was reasonable.

Burnside v. Byars
363 F. (2d) 744
United States Court of Appeals, Fifth Circuit, July 21, 1966.

Parents sued to enjoin school officials from denying their children the right to wear Student Non-Violent Co-ordinating Committee buttons bearing the words, "SNCC" and "One Man One Vote," while attending Booker T. Washington High School in Philadelphia, Mississippi. The parents contended that the school regulation forbidding the wearing of the buttons was unreasonable and abridged their childrens' constitutional rights of free speech. School authorities rejoined that the regulation was reasonable in maintaining proper school discipline. The lower court denied the injunction, but on appeal the decision was reversed.

The court found that the proscribed activity, wearing the "freedom buttons," caused no commotion, but was merely the subject of fellow students' curiosity. Therefore, forbidding students to wear the button was held to be arbitary and unreasonable, and an unnecessary stifling of free speech. The court stated:

> The liberty of expression guaranteed by the First Amendement can be abridged by state officials if their protection of legitimate state interests necessitates an invasion of free speech. The interest of the state in maintaining an educational system is a compelling one, giving rise to a balancing of First Amendment rights with the duty of the state to further and protect the public school system. The establishment of an educational program requires the formulation of rules and regulations necessary for the maintenance of an orderly program of classroom learning. In formulating regulations, including those pertaining to the discipline of school children, school officials have a wide latitude of discretion. But the school is always bound by the requirement that the rules and regulations must be reasonable.

For these reasons the court ruled that the injunction should have been granted and the students permitted to wear the buttons peaceably. In so ruling, the court said:

> School officials cannot ignore expressions of feelings with which they do not wish to contend. They cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do [sic] not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

Cohen v. Mississippi State University of Agriculture and Applied Science
256 F. Supp. 954
United States District Court, Northern District of Mississippi, E.D., July 15, 1966.

Under federal civil rights statutes a student brought suit against officials of his college, challenging the constitutionality of a Mississippi statute which authorized the Board of Trustees of State Institutions of Higher Learning to enact traffic rules and regulations for state campuses, violations of which constituted misdemeanors. The student attacked this law as an unconstitutional delegation of legislative powers.

The facts were that the student was a persistent violator of campus parking regulations. Ten tickets were issued to him under the challenged statute. Under campus rules, a quick plea of guilty was practically preferable to denial of guilt. The college admitted that penalties for parking violations were so bewildering and numerous that it was impossible to determine with certainty what those penalties were. When, on this ground, the student began contesting his tickets, the college threatened him with a request for his withdrawal if the tickets were not paid within four days. The student was also advised that a faculty disciplinary hearing concerning him was scheduled for the day the tickets were to be paid.

The student charged that he was being persecuted for unconstitutional reasons since he was not afforeded his rights to fair trial, counsel, jury, confronting witnesses, and absence of fixed standards. He sought a declaration that the enabling statute and traffic regulation were illegal, an injunction restraining the college from enforcing them or otherwise harassing him, and an order directing expungement of violations from his college records and reinstating him academically. The court upheld the validity of the statute and regulations, and denied the relief sought.

The legislature had power to delegate to an executive department or administrative agency the power to promulgate rules and regulations whose violations subjected the violator to criminal sanctions, stated the court. Agencies cannot legislate, but once the legislature has indicated its will, it may empower others to further its objective by administrative procedures, provided it delineates over-all policy. It was hard for the court to understand how else the state legislature could have the regulations administered without letting the school spell out details. No constitutional rights were denied the student either, since misdemeanor prosecutions provided full right to challenge the validity of the regulation.

New York

Blank v. Board of Higher Education of the City of New York
273 N.Y.S. (2d) 796
Supreme Court of New York Special Term,
Kings County, Part I,
September 28, 1966

A college student brought an action to have conferred on him a Bachelor of Arts degree which he alleged was improperly denied him by the Dean of Faculty at Brooklyn College. The facts were that the student needed credits in two psychology courses to graduate. At the same time he was scheduled to enroll in a law school 360 miles away. Since he could not attend law school and college simultaneously, he investigated and was assured by the head of the Psychology Department at Brooklyn College and by two psychology professors that he could take the psychology courses by reading the material on his own and taking the examination, without attending classes. The student did so and passed, but his B.A. degree was withheld on a university regulation that class attendance was prerequisite to granting credit in a course. Meanwhile, the student had obtained a position available only to college graduates and had begun attendance at law school on the basis of assurances of the Brooklyn College staff.

The court held that the student was entitled to his college degree. If the college had an unwaivable policy of withholding credits for lack of attendance, this should have been known to the department head and professors who advised the student contrariwise. Moreover, the existence of such policy was contradicted by two provisions of the Brooklyn College bulletin which provided for credit toward a degree without attendance. The student acted in obvious reliance on the advice of the college teachers who had apparent authority to advise on rules regarding credit and attendance. He expended time, money, and effort in taking the courses to satisfactory completion without fair warning that his degree would be denied.

The authority of the Dean of the Faculty to determine the acceptability of a program for awarding a degree was not questioned, but his authority was not absolute either. It must rest on reasonable and plausible bases. He could not escape the binding effect of the representations of his agents, the department head and professors, performed within the scope of their apparent authority. Through such agents, he permitted the student to take courses without attending classes and was thereby estopped from later revoking this permission. The school was therefore directed to confer the degree on the student.

Cosme v. Board of Education of the City of New York
270 N.Y.S. (2d) 231
Supreme Court of New York, Special Term, New York County, Part I, May 13, 1966.

The parent applied for a court order to have her attorney present at a hearing or conference scheduled by the school officials to discuss her son's temporary suspension from school because of misconduct. At the oral argument, the parties agreed that the pupil should be sent immediately to another school, and the court directed the file to be sealed for the pupil's protection.

The court found that under the law the school board had the right to establish the procedure relating to pupil suspension and that the board was following designated and proper procedures in scheduling the hearing to consider the pupil's future schooling. But since the school board is not required to grant the parent a hearing and because the hearing is purely administrative in nature, the court held that the parent was not entitled to be represented by counsel. The very purpose of the interview, the court said, would be frustrated or impeded by the presence of counsel, who might be tempted to turn the conference into a quasi-judicial hearing. Moreover, the petition to the court was held to be premature, since any final determination made in or part of the suspension hearing was reviewable by the state commissioner of education, and the administrative remedies for review had not been exhausted.

North Dakota

Nord v. Guy
141 N.W. (2d) 395
Supreme Court of North Dakota, March 23, 1966.

Plaintiff, a taxpayer and parent of two minor sons enrolled in the University of North Dakota, a state institution, brought a class action against state officials and the state board of higher education. The suit challenged the constitutionality of a 1965 statute which authorized the issuance of up to $10 million in general obligation bonds of the state and authorized the state board of higher education to use the funds to provide facilities described as "buildings used for classroom, library, laboratory, workshop, administration and maintenance purposes, and landscaping, furnishings, and equipment associated therewith" to be used for educational purposes at the various state institutions of higher learning. One provision of the statute directed the state board of higher education to set an annual facility fee to be charged each student registered in the institutions under its control. The fees were to be used to pay part of the interest and principal of the bonds. Accordingly, an annual facility fee of $15 was imposed.

One of the numerous grounds on which the statute was challenged was that the statute unlawfully delegated legislative power to the state board of higher education.

The court held the statute to be unconstitutional. It ruled that the failure of the legislature to specify where the facilities were to be constructed or the priority or the the cost thereof, or to lay down guidelines for the state board of higher education to follow in providing the facilities was an unconstitutional delegation of legislative authority. In reaching this decision, the court examined the provisions in the state constitution which created the state board of higher education for the "control and administration" of the state institutions of higher learning, and concluded that the powers granted to this board were supervisory and administrative, and not legislative.

Texas

Morris v. Rousos
397 S. W. (2d) 504
Court of Civil Appeals of Texas, Austin, December 8, 1965; rehearing denied, January 5, 1966.

(See Pupil's Day in Court: Review of 1959, Morris v. Nowotny, p. 48.)

A former student at the University of Texas brought a damage suit of $90,000 against the university psychiatrist for certain alleged acts resulting in the student's commitment to a state mental hospital. One allegation of wrongdoing on the part of the psychiatrist was that he wrote a letter stating that the student suffered from a certain psychosis, but the diagnosis was not validly made because the psychiatrist had not examined the student. The student also alleged that copies of this letter were retained in the school files, and were accessible to prospective employers; and that the prospective employers had seen the letters and as a result had either not employed him or discharged him after employment.

The psychiatrist moved for summary judgment, claiming that the complaint failed to adequately allege that he had intentionally and willfully committed an unlawful act injurious to the student. In his supporting affidavit, the psychiatrist stated that the medical opinions expressed in his affidavit in a related lawsuit concerning this student were based on sufficient observation and examination to arrive at the diagnosis.

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The trial court granted summary judgment in favor of the university psychiatrist. This decision was affirmed on appeal. The court held that the complaint did not adequately allege that the university psychiatrist had intentionally committed any unlawful acts or injuries to the student or had willfully and maliciously placed false information in the student's record detrimental to his employability.

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